

1999

# Rebekah Ann Kopp (Jahn) v. Don Samuel Kopp : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CKET NO. 990014-CA

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REBEKAH ANN KOPP (JAHN),

Appellant,

v.

DON SAMUEL KOPP,

Appellee.

Case No. 990014-CA

Priority No. 15

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BRIEF OF APPELLANT

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Appeal from the Fourth Judicial District Court of Utah, Utah County,  
the Honorable Howard H. Maetani presiding.

---

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**FILED**  
Utah Court of Appeals

MAY 24 2014

Julia D'Alesandro  
Clerk of the Court

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## **STATEMENT OF JURISDICTION**

The Utah Court of Appeals U.C.A. has jurisdiction over the instant appeal pursuant to Utah Cod Ann. §78-2a-3(2)(j).

## **STATEMENT OF ISSUES/STANDARDS OF REVIEW**

Whether the trial court erred in failing to enforce the settlement agreement. The decision of a trial court to summarily enforce a settlement agreement will not be reversed on appeal unless it is shown that there was an abuse of discretion. *Goodmansen v. Liberty Vending Systems, Inc.*, 866 P.2d 581 (Utah App. 1993); *quoting Zions First Nat'l Bank v. Barbara Jensen Interiors, Inc.*, 781 P.2d 478, 479 (Utah 1989) and *Mascaro v. Davis*, 741 P.2d 938, 942 n. 11 (Utah 1987)).

## **STATEMENT OF GROUNDS FOR SEEKING REVIEW**

Appellant alleges error by the trial court in failing to apply appropriate legal standards when ruling on a motion and determination of the issues before it, and in allowing a party to argue facts not in evidence. Objection to the argument was taken at page 26 line 8 and again at page 35 line 5. (*See* R. 153, Motion Hearing)

## **DETERMINATIVE AUTHORITY**

DETERMINATIVE LAW: The following statutes, rules, and cases are believed to be determinative of the respective issues stated:

1. Statutes: None.

**2. Court Rules:**

- a.** Utah Code Section 78-2a-3(2)(h).
- b.** Utah Rule of Judicial Administration 4-501(2)(B).

**3. Cases:**

- a.** *Sackler v. Saven*, 897 P.2d 1217 (Utah 1995).
- b.** *State v. Pena*, 869 P.2d 932, 935- 936 (Utah 1994).
- c.** *John Deere Co. v. A&H Equipment*, 976 P.2d 880, 883 (Utah App. 1994).
- d.** *Goodmansen v. Liberty Vending Sys.*, 741 P.2d 938, 942 (Utah 1987)
- e.** *Mascaro v. Davis*, 741 P.2d 938 (Utah 1987).
- f.** *L&A Drywall, Inc. v. Whitmore Construction Co.*, 608 P.2d 626, 629 (Utah 1980).
- g.** *Cox Construction Co. v. State Road Commission*, 583 P.2d 85-87 (Utah 1978).
- h.** *Hanover Limited vs. Fields*, 568 P.2d 751 (Utah 1977).
- i.** *West vs. West*, 403 P.2d 22 (Utah 1965).
- j.** *Oliver vs. Elegante*, 214 P. 313 (Utah 1923).

## **STATEMENT OF THE CASE**

**1.** Appellant and Appellee were married in Salt Lake City, Utah, on March 18, 1977.

**2.** On August 17, 1995, a Decree of Divorce was entered, granting the parties a divorce and entering orders regarding custody of the parties' minor children, child support, visitation, division of marital property and marital interest in real estate, and assigning the responsibilities for marital debts.

**3.** On September 17, 1996, Appellant filed a Verified Petition for Modification for Decree of Divorce, seeking to modify her obligations of child support payments and her rights for visitation due to a material change of circumstances in that Appellant had remarried, moved out of Utah, was caring for her newborn child, and was unemployed.

**4.** On May 27, 1998, Appellant filed her Motion to Enforce Stipulation, along with a Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, setting forth detailed facts supported by her affidavit.

**5.** On June 2, 1998, Appellee filed his Response to Motion to Enforce Stipulation containing no factual representation and not refuting the facts presented by Appellant. Appellee's Response did not include an affidavit.

**6.** On June 8, 1998, Appellant filed her Reply Memorandum in Support of Petitioner's Motion to Enforce Stipulation and Notice to Submit.

**7.** The Court heard oral arguments on June 22, 1998, on Petitioner's Motion to Enforce Stipulation and Notice to Submit, without taking any further evidence through testimony or otherwise.

**8.** On July 2, 1998, Petitioner moved to withdraw her Petition to Modify the Decree of Divorce, and the Court granted that motion.

**9.** Also on that date, the Court verbally ruled on Petitioner's Motion to Enforce Stipulation, denying the same.

**10.** The court executed a document erroneously titled, "Order On Petitioner's Motion to Withdraw Petition" dated November 10, 1998 and marked "Filed" by the court on November 10, 1998, and also on November 24, 1998.

**11.** The parties agreed to amend the Order to change the title of the Order, and to provide a property description not included in the Order of November 10, 1998.

**12.** The Court executed the amended order, titled "Order on Petitioner's Motion to Enforce Stipulation" on November 20, 1998.

**13.** It is from the trial court's November 20, 1998 Order which this appeal is taken.

## **STATEMENT OF FACTS**

**1.** Appellant and Appellee were married in Salt Lake City, Utah, on March 18, 1977 (*See* R. 29-35, Verified Complaint, paragraph 2.)

**2.** On August 17, 1995, a Decree of Divorce was entered, granting the parties a divorce and entering orders regarding custody of the parties' minor children, child support, visitation, division of marital property and marital interests in real estate and assigning responsibility for marital debts. (*See* R. 35, Decree of Divorce.)

**3.** On September 17, 1996, Appellant filed a Verified Petition for Modification of Decree of Divorce seeking to modify her obligations of child support payments and her rights of visitation due to a material change of circumstances in that Appellant had remarried, moved out of Utah, was caring for her new born child, and was unemployed. (*See* R. 39-40, Verified Petition for Modification of Decree of Divorce, paragraphs 5(a),5(b), 5(c), and 7.)

**4.** In November 1997, Appellee contacted Appellant to tell her he wanted to refinance the house for \$108,000.00, and wanted her to quit claim her part of the home to him. Appellant told him that she was uncomfortable quit claiming the property to him because Appellant didn't want to lose her part of the equity in the house. Appellee kept calling Appellee throughout November and December trying



to convince her to sign a quit claim deed to him. Appellee told her that he would not cheat her out of my interest in the home and that Appellant should trust him. (*See* R. 121, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 1.; *See* R. 108-109, Affidavit of Rebekah Ann Kopp, paragraph 2.)

5. After numerous discussions, the parties finally agreed during the last part of November and first part of December, that Appellant would quit claim her part of the property over to Appellee, which would allow him to refinance the loan on the house. Appellee could also use \$15,000.00 of Appellant's equity in the house toward supporting the children and in exchange he would no longer seek future child support payments nor seek payments of the arrearages. It was also agreed to by the parties that the remainder of the Appellant's equity in the home would be put in a trust account for the children, with Appellant as a sole trustee and administrator. This money would be used for airline tickets, phone bills, etc. (*See* R. 120, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 2; *See* R. 108, Affidavit of Rebekah Ann Kopp, paragraph 3.)

6. After coming to this mutually acceptable resolution, Appellee told Appellant that he would speak with his attorney for the purpose of drafting up the agreement. (*See* R. 120, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 3; *See* R. 108, Affidavit of Rebekah Ann Kopp, paragraph 4.)

**7.** On February 11, 1997, Appellee's attorney prepared a Stipulation and submitted it to Appellant's counsel. (*See* R. 120, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 4.)

**8.** Appellant, upon reviewing the Stipulation, noticed that the terms that were included in the agreement were not the same terms that the parties had previously agreed upon. As such, Appellant declined from signing the agreement. (*See* R. 120, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 5; *See* R. 108 Affidavit of Rebekah Ann Kopp, paragraph 4.)

**9.** Appellee continued to call Appellant trying to intimidate her into signing the agreement his attorney had drafted. Appellee called so many times that Appellant began to not to pick up the phone until she knew who was calling. One time Appellee had their son Aaron call Appellant and ask her why she had not signed the agreement. Appellant had always been very careful about keeping their children out of the problems between them. Appellant was in the middle of explaining this to Aaron when Appellee came on the phone. He told Appellant he wanted Aaron to hear for himself why Appellant was creating havoc in their lives by not signing the Stipulation. Appellant told Appellee that the way it was written the Stipulation did not represent what they had agreed on. Several days later Appellee called Appellant back and the parties reworked the issues that concerned her regarding the Stipulation.

Appellee told Appellant that he could not afford to have his attorney write up another agreement. Appellant told Appellee that she would have her attorney draft the Stipulation. (*See* R. 119-120, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 6; *See* R. 107-108, Affidavit of Rebekah Ann Kopp, paragraph 5-6.)

**10.** Before Appellant presented the terms of the Stipulation to her attorney, she spoke to Appellee and read back to him on the phone the points they had agreed on. Appellant wanted to make sure that she would not be wasting any more time or money on the matter. (*See* R. 119, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 7; *See* R. 107, Affidavit of Rebekah Ann Kopp, paragraph 7.)

**11.** The following were the terms of their agreement as set forth in the final Stipulation.

**A.** It was agreed that the monies would be used to pay off the first and second mortgages in the amounts of \$59,000.00 and \$24,259.10 respectively.

**B.** It was agreed that once the two mortgages were paid off, a portion of the monies would be used for back child support payments in

the amount of \$7,987.00. This figure was calculated up until the month of February, 1997.

**C.** All monies remaining were to be put into an account in Appellee's name specifically, to be used for the improvement of the house at 2647 West 2210 North, Provo, Utah; medical , dental, and orthodontic expenses for the children above and beyond that which was covered by Appellee's insurance; telephone charges generated by the children to call New York; airline tickets to visit New York; and any and all future child support payments were to come from this account. The statements from this account were to be duplicated by the bank with a copy going to each concerned. Appellee agreed to maintain and send copies of all receipts to Appellant.

**D.** It was agreed that there shall be no further loans or encumbrances against the title, or refinancing of the home after the Stipulation was signed.

**E.** When both parties agreed to the sale of the home, or at the time of emancipation of all the children, the house was to be sold and the proceeds of the sale should have been applied as follows:

1. First, to the cost of the sale including the brokers commissions, if a broker is used (cost of closing and cost of title).
2. Second, a reduction by the amount of the balance of the mortgage due on the date of the sale of said property.
3. Third, any monies left over were to be divided equally by Appellee and the trust fund for the children, including Malorie Rebekah Jahn with Appellant Rebekah A. Jahn designated the trustee with full discretionary power over its distribution.

**F.** Appellant waived all interest in Appellee's pension provided that the provisions of the Stipulation were followed. (*See* R. 117-119, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 8, 8(a) - (f); *See* R. 106-107, Affidavit of Rebekah Ann Kopp, paragraphs 8(a) - 8(f).)

**12.** Appellant received a copy of the Stipulation, the terms of which are cited above, from her attorney on March 7, 1997. Appellant signed the Stipulation and sent it to her attorney. (*See* R. 117, Memorandum in Support of Plaintiff's Motion to

Enforce Stipulation, paragraph 9; *See* R. 94-97, Final Stipulation, paragraphs 1-10; *See* R. 106, Affidavit of Rebekah Ann Kopp, paragraph 9.)

**13.** Appellee has never signed the Stipulation. (*See* R. 119-120, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 11; *See* E. 104, Affidavit of Rebekah Ann Kopp, paragraph 15.)

**14.** Appellee, however, called Appellant numerous times asking for the quit claim deed and telling her that if he could not refinance the home soon he would be forced to sell the house. Appellant did not want her children to experience the stress that the possibility of this action would create. Appellant told Appellee to proceed with the refinancing and as soon as he signed the Stipulation Appellant would be more than happy to give the quit claim deed to him. Appellee told Appellant he needed the deed immediately and that he could do nothing until he had the deed. Appellee also told Appellant that she should trust him. (*See* R. 116-117, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 12; *See* R. 105-106, Affidavit of Rebekah Ann Kopp, paragraph 10.)

**15.** Appellant's attorney had the quit claim deed. Appellant, not wanting to see her children become homeless and believing the Appellee would sign the Stipulation, phoned her attorney and told him that she would have her parents come and get it and that Appellee would pick up the deed from them. Appellant's parents

picked up the deed the next day and Appellee instantly picked it up from them. (*See* R. 116, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 13; *See* R. 105, Affidavit of Rebekah Ann Kopp, paragraph 11.)

**16.** On April 16, 1997, Appellant's found out that Appellee had terminated his counsel's representation. Appellant then called Appellee and asked him what had happened and why he had not sign the Stipulation yet. He told Appellant that he would not sign the agreement. (*See* R. 116, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 14; *See* R. 105, Affidavit of Rebekah Ann Kopp, paragraph 12.)

**17.** Appellant became upset stating that she had only agreed to send him the quit claim because he had promised her he would sign the Stipulation. Appellee told Appellant that unless she changed the last paragraph excluding Appellant's new child, Malorie, from receiving any part of the agreement that he would never sign the agreement. Appellant told him that she was not willing to make that change and for him to sign it based on her agreement. (*See* R. 115-116, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 15; *See* R. 105, Affidavit of Rebekah Ann Kopp, paragraph 13.)

**18.** Appellee also told Appellant that as far as the courts were concerned, the house was his. Appellee also told Appellant that if she took him to court he had a line

of equity he could use on the home and he would use it up until nothing was left after the sale of the home. (*See* R. 115, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 16; *See* R. 105, Affidavit of Rebekah Ann Kopp, paragraph 13.)

**19.** Appellant performed her end of the settlement agreement by quit claiming the property to Appellee. Appellee has yet to perform on his part of the settlement agreement. (*See* R. 115, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, paragraph 118; *See* R. 104, Affidavit of Rebekah Ann Kopp, paragraph 15.)

**20.** On May 27, 1998, Appellant filed her Motion to Enforce the Stipulation, with a supporting memorandum. (*See* R. 93-122, Motion to Enforce Stipulation, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation, Mailing Certificate.)

**21.** On June 2, 1998, Appellee filed his Response to Motion to Enforce Stipulation containing no factual representation and not refuting the facts presented by Appellant. (*See* R. 123, Response to Motion to Enforce Stipulation.)

**22.** On June 8, 1998, Appellant filed her Reply Memorandum in Support of Petitioner's Motion to Enforce Stipulation. (*See* R. 127-128, Reply Memorandum in Support of Petitioner's Motion to Enforce Stipulation.)



**23.** The Court heard oral arguments on June 22, 1998, without taking further evidence. On the facts before it, the Court determined no agreement had been reached between the parties. (*See* R. 133, Minute Entry; *See* R. 153, Motion Hearing.)

**24.** The Court executed a document erroneously titled, "Order on Petitioner's Motion to Withdraw Petition" dated November 10, 1998, and marked, "Filed" by the Court on November 10, 1998, and also on November 24, 1998. (*See* R. 136-138, Order on Petitioner's Motion to Enforce Stipulation.)

**25.** The parties agreed to amend the order to change the title of the Order, and to provide a property description not included in the Order of November 10, 1998. The Court executed the amended order titled, "Order on Petitioner's Motion to Enforce Stipulation" on November 20, 1998. (*See* R. 141-143, Order on Petitioner's Motion to Enforce Stipulation.)

**26.** It is from the trial court's November 20, 1998 order which this appeal is taken.

**27.** The Notice of Appeal was filed on December 14, 1998. (*See* R. 148, Notice of Appeal.)

## **SUMMARY OF ARGUMENT**

There are three reasons why the Court abused its discretion in not enforcing the Stipulation Agreement. First, since only the Appellant offered factual evidence and since the Appellee did not refute the factual evidence as required by Rule 4-501, supported the granting of the Motion. Second, the Court in denying the Motion went against the clear weight of the law which supports the enforcement of stipulations. Third, the Court abused its discretion because it accepted the Appellee's unsworn argument at the June 22, 1999 hearing as evidence without an Evidentiary Hearing and cross-examination, and thereafter, erroneously ruling in the Appellee's favor. For these enumerated reasons, the Court's decision must be set aside and the Stipulation must be enforced.

## **ARGUMENTS**

### **I.**

#### **THE COURT ABUSED ITS DISCRETION BY NOT ENFORCING THE SETTLEMENT AGREEMENT**

On May 27, 1998, Appellant filed her Motion to Enforce Stipulation, along with the Memorandum in Support Plaintiff's Motion to Enforce Stipulation, setting forth detailed facts supported by her affidavit. (*See* R. 92-121, Motion to

Enforce Stipulation, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation with exhibits, and Affidavit of Rebekah Ann Kopp.)

On June 2, 1998, Appellee filed his Response to Motion to Enforce Stipulation. (*See* R. 123, Response to Motion to Enforce Stipulation.)

The Appellee's Response to Motion to Enforce Stipulation merely stated:

Comes now the Respondent in the above entitled action and moves the court hold action in the Motion to Enforce Stipulation until the Petitioner, Rebekah Ann Kopp (Jahn) has met her obligation of child support due the Respondent, Don Samuel Kopp, and furthermore that *some of the information in said Stipulation Exhibit "A", and statement of facts that are incorrect be corrected.*

(Emphasis added.)

The Appellant then filed her Reply Memorandum in Support of Petitioner's Motion to Enforce Stipulation. (*See* R. 126-128, Reply Memorandum in Support of Petitioner's Motion to Enforce Stipulation.) As that Reply Memorandum states and as will be reiterated here, based on the Appellee's written response, the Court had no other option but to rule in the Appellant's favor and grant her motion to enforce the stipulation since the Appellee had provided *no law, facts, or other supporting documentation justifying the Court not to rule in favor of the Appellant's Motion to Enforce Stipulation.* The Appellee also failed to file any opposing affidavit disputing the facts contained in Appellant's affidavit. The

Appellee's only argument seemed to be that the Court "wait" to make a ruling on the Appellant's motion until after the Appellant had paid her child support.

Rule 4-501 of the Code of Judicial Administration states in pertinent part:

The responding party shall file and serve upon all parties within ten (10) days after service of the motion, a memorandum in opposition to the motion, and all supporting documentation. If the responding party fails to file a memorandum in opposition to the motion within ten (10) days after service of the motion, the moving party may notify the clerk to submit the matter to the court for a decision as provided in paragraph (1)(d) of this rule.

Oral arguments on this case were then held on June 22, 1998, as will be evidenced by the first page of the hearing transcript which is located in the record. (*See* R. 153, Motion Hearing, page 3.) No testimony was provided at the hearing. While the Appellee offered argument, he did so on facts not in evidence. The only evidence in front of the court when it made its decision was the evidence presented by the Appellant in her Affidavit submitted with her Motion to Enforce Stipulation. The Appellee's Response as shown above set forth no evidence disputing the Appellant's facts.

The Appellee also did not offer any evidence disputing the Appellant's Motion to Enforce the Stipulation at the June 22, 1999, hearing. Since it was not an evidentiary hearing, and the Appellee was not under oath, all the Appellee was doing was "arguing" the facts. He was acting as a "pro se counsel" and not as a

witness. While he made arguments at the hearing, those arguments should not have been accepted as admissible evidence against the Appellant's Motion to Enforce the Stipulation.

The only evidence that the Court had before it were the Appellant's statements contained in her Affidavit. Those were the only facts that had been introduced by either party as evidence. The Court abused its discretion in not enforcing the Stipulation in the Appellant's favor because the facts presented fully supported the Motion. There was no factual evidence which supported denying the Motion. For these enumerated reasons, the Court abused its discretion in not enforcing the Stipulation Agreement.

## **II.**

### **THE TRIAL COURT ABUSED ITS DISCRETION GOING AGAINST THE CLEAR WEIGHT OF THE LAW WHICH ENFORCES SETTLEMENT AGREEMENTS ENTERED INTO BY PARTIES.**

#### **A. THE LAW ON ENFORCEMENT OF SETTLEMENT AGREEMENT**

The laws of Utah favor the settlement of disputes. *Goodmansen v. Liberty Vending Sys.*, 741 P.2d 938, 942 (Utah 1987). It is in the power of the trial court to enforce a settlement agreement if there is an enforceable contract. *John Deere Co. v. A&H Equipment*, 976 P.2d 880, 883 (Utah App. 1994). The Utah Court of

Appeals has held that it will affirm the enforcement of a settlement agreement if the record establishes a binding agreement and the excuse for nonperformance is comparatively unsubstantial. *Id.* at 884 (citations omitted). The decision of a trial court to summarily enforce a settlement agreement will not be reversed on appeal unless it is shown that there was an abuse of discretion. *Mascaro v. Davis*, 741 P.2d 938 (Utah 1987).

Whether a court should enforce such a settlement agreement does not turn merely on the character of the agreement. An agreement of compromise and settlement constitutes an executory accord. *L&A Drywall, Inc. v. Whitmore Construction Co.*, 608 P.2d 626, 629 (Utah 1980) (citing *Cox Construction Co. v. State Road Commission*, 583 P.2d 85-87 (Utah 1978)). Since an executory accord “constitutes a valid enforceable contract” basic contract principles effect the determination of whether a settlement agreement should be enforced. *Mascaro*, 741 P.2d 942; *See also Sackler v. Saven*, 897 P.2d 1217 (Utah 1995).

Moreover, an Appellant seeking the enforcement of a settlement agreement has the burden of showing that the offer and acceptance of the settlement agreement were more probable than not. *Sackler*, 897 P.2d 1217. The contract is not formed unless there is a meeting of the minds. *Id.* However, in order for a Stipulation to be enforced, it does not need to be signed, filed with the court, or

entered upon the minutes of the court. In *John Deere*, the Court of Appeals upheld the trial court's enforcement of a settlement agreement that had been negotiated by the parties' attorneys, even though it was neither signed by the attorneys, filed with the court, nor entered upon the minutes of the court. The party in the enforcement in *John Deere* argued that Utah Code Section 78-51-31(2) and Utah Rule of Judicial Administration 4-504(8) required that before an order was to be enforced, a settlement agreement must have been signed by the attorneys and filed with the court or read into the minutes of the court. The court of appeals found that there was no such requirement. Rather, the rules were "not intended to change existing law with respect to the enforceability of written contracts." Furthermore, new subsection (10) provides that " nothing in this rule shall be construed to limit the power of any court, upon a proper showing to enforce the settlement agreement or any other agreement which had not been reduced to writing." *John Deere*, at 887 (quoting Utah Rule of Judicial Administration 4-504).

**B. THE FACTS OF THIS CASE CLEARLY ESTABLISH THAT THE PARTIES REACHED A BINDING AGREEMENT**

In the present situation, there was an enforceable contract. The parties had come to a meeting of the minds as to the terms of the contract. Their negotiations

had started in November and only after two drafts of the Stipulation did they finally come to an agreement in February on the terms of the Stipulation.

Appellee cannot argue that he did not accept the terms of the Stipulation. It was he who approached Appellant in the first place in November of 1996, regarding the refinancing of the house and kept pushing the issue until Appellant agreed to sign a quit claim deed to him. Prior to receiving the quitclaim deed, Appellee stood to benefit more than Appellant did by having the Stipulation. The home would be in his name. Both mortgages would be paid off. All back child support would be paid to Appellee. The remaining monies were to be put in an account to be used for improvements on Appellee's house, medical, dental and orthodontic expenses for the children, telephone charges and airline bills for the childrens' travel to New York.

After the Appellee had lied and manipulated the Appellant into signing the quit claim deed to him and had refinanced the home, he was unwilling to follow through on the remaining terms of the Stipulation. Instead he argued in the June 22, 1998, hearing but presented no testimony, that on top of getting all the equity in the house, Appellant also owes him past due child support, future child support, phone bill costs and travel expenses for the children. In other words he is reneging on the parties' settlement agreement in order to have double recovery.



Both the draft and the final version of the Stipulation had clauses within them that evidenced that the Stipulation was to be signed *at the same time* Appellant quit claimed the property to the Appellee. The Stipulation prepared by Appellee's attorney stated "Plaintiff shall execute a quit claim deed in favor of Defendant *concurrently* with the signing of the Stipulation conveying any and all interest she may have therein to Defendant." (Emphasis added.) While the Appellee's draft of the Stipulation had to be revised in order to more accurately reflect the parties' intention, it does show that *there was an intent on behalf of the parties to have the quit claiming and the executing of the Stipulation occur at the same time*. The Final Stipulation also stated "Plaintiff shall execute a quit claim deed in favor of Defendant concurrently with the signing of this Stipulation conveying any and all interest she may have there unto Defendant under the and subject to the terms and conditions listed in (a) through (f) of the Stipulation."

Appellant has already performed her end of the agreement by quit claiming her interest in the property to Appellee. Appellee has never executed the Stipulation. Instead in his argument at the hearing, he claimed that he owns the property free and clear of the Appellant, AND that she still owes him back child support, will need to pay him future child support, pay for all medical, dental, orthodontic bills, pay for all future travel expenses and pay for all phone bills for

the children. Appellee also claimed at the hearing that Appellant has no right to any of the remaining money that may be left over after the property is sold someday in the future.

The current case is much like the case in *John Deere*, for the parties negotiated the settlement and each side made an offer or counter offer. When an apparent agreement was made, the attorney submitted the proposals to their clients. Unlike *John Deere*, the parties in this case both agreed to the Stipulation and Utah law requires nothing more for the Stipulation to be enforceable.

These facts and the law on enforcement of settlement agreements were presented to the Court by the Appellant in her Motion to Enforce the Stipulation Agreement, Memorandum in Support of Motion to Enforce the Stipulation Agreement and supporting documentation. Since the law favors the enforcement of stipulations and since the Appellee offered no contrary law or facts, the Court abused its discretion by not enforcing the Stipulation Agreement.

### **III.**

#### **THE COURT ABUSED ITS DISCRETION BY DECIDING TO NOT ENFORCE THE STIPULATION WITHOUT AN EVIDENTIARY HEARING**

If the Court wanted to allow the Appellee the opportunity to present evidence relating to the negotiations revolving around the Stipulation, it should

have set a time and date for an evidentiary hearing. By not doing so and by ruling against the Appellant's Motion to Enforce the Stipulation Agreement when the clear weight of the facts and the law supported the enforcement, the Court abused its discretion.

It appears, although there is no Finding of Facts or Conclusions of Law, that the Court allowed the Appellee's unsworn statements at the hearing to affect its determination.

As stated above, the hearing which was held on June 22, 1998, was not an evidentiary hearing. Rather, it was a hearing where the Appellant was represented by her counsel and the Appellee represented himself Pro Se. During that hearing, both parties argued the facts of the case, but no evidentiary testimony was taken.

*In essence, what the Appellee did was to argue facts that were not in evidence.*

Just as an attorney is precluded from arguing matters not in evidence, so too a person representing himself Pro Se should not be allowed to present arguments on facts which are not in evidence.

Even the Court itself recognized that there needed to be an evidentiary hearing held in this matter. At a point in the hearing where the parties were discussing their interpretations of the negotiations revolving around the Stipulation Agreement, the Court itself stated as follows:

Well then we'll just have a hearing because I'm not —

\*\*\*\*

I'm not going to force the stipulation. I'm not going to force the stipulation. And if, you know, that's what we have the hearing for. We're going to have a hearing. And it seems to me now that, you know, you, if you don't, if you don't have a stipulation, because I'm not going to force it.

(See R. 153, Motion Hearing, page 53, at 13-23.)

The Court never did require an Evidentiary Hearing. Instead it made its erroneous decision to not enforce the Stipulation Agreement. Based on these enumerated reasons, the Court abused its discretion by allowing the Appellee's unsworn argument testimony affect its decision and, by ruling against the Appellant's Motion to Enforce the Stipulation Agreement.

### **CONCLUSION**

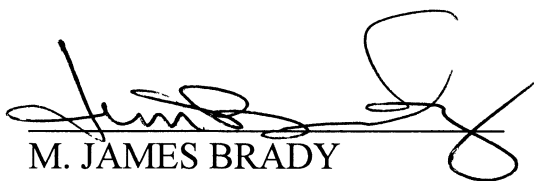
There are three reasons why the Court abused its discretion in not enforcing the Stipulation Agreement. First, the only evidence before the court fully supports the Appellant's Motion and the Appellee did not refute the evidence as required by Rule 4-501.

Second, the Court in denying the Motion went against the clear weight of the law which supports the enforcement of stipulations.

Finally, the Court abused its discretion because it chose to accept the Appellee's unsworn argument as evidence without the benefit of being under oath, or subject to cross examination, and thereafter, erroneously ruling in the Appellee's favor.

For these enumerated reasons, the Court's decision must be set aside and the Stipulation must be enforced.

DATED this 24 day of May, 1999.

A handwritten signature in black ink, appearing to read "M. James Brady", is written over a horizontal line.

M. JAMES BRADY

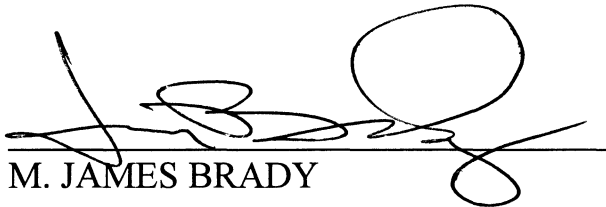
KIM H. BUHLER

Attorneys for Rebekah Ann Kopp Jahn

**CERTIFICATE OF MAILING**

I, M. James Brady, hereby certify that I personally caused to be mailed,  
postage prepaid, two true and correct copies of the foregoing **BRIEF OF**  
**APPELLANT**, to the following on this 24 day of May, 1999:

DON SAMUEL KOPP  
2647 WEST 210 NORTH  
PROVO, UTAH 84601

  
M. JAMES BRADY

## **ADDENDA**

Addendum A:	Verified Complaint
Addendum B:	Decree of Divorce
Addendum C:	Verified Petition for Modification of Decree of Divorce
Addendum D:	Memorandum in Support of Plaintiff's Motion to Enforce Stipulation
Addendum E:	Final Stipulation
Addendum F:	Motion to Enforce Stipulation
Addendum G:	Mailing Certificate
Addendum H:	Response to Motion to Enforce Stipulation
Addendum I:	Reply Memorandum in Support of Petitioner's Motion to Enforce Stipulation.
Addendum J:	Minute Entry
Addendum K:	Motion Hearing
Addendum L:	Order on Petitioner's Motion to Enforce Stipulation
Addendum M:	Order on Petitioner's Motion to Enforce Stipulation
Addendum N:	Notice of Appeal

## Exhibit A



FILED IN  
4TH DISTRICT COURT  
STATE OF UTAH  
UTAH COUNTY

AUG 4 10 48 AM '95



✓ M. James Brady (3703)  
BRADFORD, BRADY & RASMUSSEN, P.C.  
Attorneys for Plaintiff  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

File No. 2663.02

---

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

---

REBEKAH ANN KOPP,

Plaintiff,

vs.

DON SAMUEL KOPP,

Defendant.

**VERIFIED COMPLAINT**

Civil No. 9544 01702 DA

---

COMES NOW the Plaintiff and complains of the Defendant and for cause of action  
alleges as follows:

**JURISDICTION**

1. Plaintiff is a resident of Utah County, State of Utah and has been for more than three months immediately prior to the commencement of this action for divorce.
2. Plaintiff and Defendant were married at Salt Lake County, State of Utah on March 18, 1977, and since that date have been and now are husband and wife.
3. During the course of the marriage, differences have arisen between the parties which differences are irreconcilable and have made the continuation of the marriage impossible.

### **CHILDREN**

4. There has been four (4) children born as issue of this marriage, to wit:

<u>Name</u>	<u>Birthdate</u>	<u>Age</u>
Aubrey Lynn Kopp	12-03-1977	17
Don Samuel Kopp Jr.	06-18-1979	16
Aaron Joseph Kopp	02-18-1981	14
Megan Ann Kopp	11-02-1982	12

5. Plaintiff has not been notified and is not aware of any other action pending in any state regarding the custody of the minor children of the parties.

6. Plaintiff and Defendant are fit and proper parents and should be awarded joint custody of the minor children with Defendant as the primary physical custodian of the children.

7. Plaintiff should be awarded liberal visitation as the parties may agree between themselves, but in any event, not less than visitation as defined in Section 30-3-32 through 30-3-27 U.C.A.

### **CHILD SUPPORT**

8. Plaintiff is gainfully employed by Provo City with gross monthly earnings of approximately \$2357.99. Defendant is gainfully employed by Brigham Young University, with gross monthly earnings of an unknown amount.

9. The Court should require Defendant to disclose his personal income information so that a child support amount may be calculated based upon the child support tables of the State of Utah.

10. Defendant should be ordered to provide health insurance coverage for the minor children of the parties as the same may be available to him through his place of employment.

Plaintiff will continue to maintain the children on her health insurance as the same is available to her through her place of employment, the Plaintiff's insurance to be secondary to that of the Defendant. Each party should be responsible for and pay 50% of all medical expenses of the minor children not covered by insurance, including, but not limited to: medical, surgical, hospitalization, dental, orthodontic, ophthalmology, psychological, psychiatric, counseling and others.

### **REAL PROPERTY**

11. During the course of the marriage, the parties acquired an interest in real property consisting of one residential property located at approximately 2647 West 210 North, Provo, UT. It is reasonable that Defendant be awarded the possession and use of the parties' real property until such time as the parties' youngest child reaches 18 years of age, or until her regular school class graduates from high school, whichever is later; or until Defendant remarries; or until Defendant attempts to refinance the property, or add additional encumbrances on title; or until the parties agree to sell the property, whichever event should first occur.

12. Upon the occurrence of one of the events stated in paragraph 11 above, the property shall be sold at a fair market price and the proceeds of the sale shall be applied as follows:

a. First to the costs of the sale, including a broker's commission, costs of closing and costs of title, but excluding any repairs or maintenance;

b. Second a reduction by the amount of the balance due on the first mortgage as of June 1, 1995 in the amount of \$61,285.59 and not reduced by the second mortgage.

c. Then the balance after deducting for items a. and b. above shall be divided equally between the parties.

13. After sale of the property, Defendant should be entitled to keep the difference, if any, between the payoff amount due to the mortgage holders at the time of sale , and the amount due as of June 1, 1995, as stated in paragraph 12. b. above.

14. During his possession and use of the property, Defendant should be responsible for payment of all mortgage obligations, and for all maintenance and repairs to the real property, and Plaintiff should not share in the costs thereof.

### **PERSONAL PROPERTY**

15. The parties have acquired certain personal property during the course of the marriage, and it is reasonable and proper that the personal property acquired by the parties be divided as follows:

a. Plaintiff should be awarded:

- i. her personal clothing and effects
- ii. the 1989 honda Accord Lxi
- iii. the master bedroom set, except the mattress, including the dresser, night stand, head board and foot board
- iv. the kitchen hutch and china from her grandmother
- v. the chintz couch in the living room
- vi. the white hutch in the living room
- vii. the living room coffee table
- viii. the antique lamp which is in her possession
- ix. the television from the bedroom which is in her possession
- x. the bread machine which is in her possession
- xi. the paintings and decorations plaintiff made or acquired
- xii. the large hutch in the family room
- xiii. the yellow stoneware dishes
- xiv. plaintiff's bike which is in her possession

b. Defendant should be awarded:

- i. his personal clothing and effects
- ii. the personal clothing and effects of the minor children
- iii. all other appliances, furniture, furnishings and household goods not identified above.

16. Plaintiff should be awarded an interest in Defendant's vested pension and retirement interests which accrued during the course of the marriage.

17. Plaintiff has no vested interest in a pension or retirement. Defendant should not be awarded an interest in any pension or retirement interests of the Plaintiff which vests after the termination of the parties' marriage.

18. In the event Defendant assumes responsibility for, and pays in full, the second mortgage obligation against the parties' home, which obligation is currently owed to First Security Bank in the approximate amount of \$22,100.00, Plaintiff should relinquish her claim to Defendant's vested pension and retirement interests.

#### **DEBTS AND OBLIGATIONS**

19. The parties have incurred certain debts and obligations during their marriage, which obligations should be paid as follows:

a. Plaintiff shall pay and hold Defendant harmless on the following debts:

- |                      |                    |
|----------------------|--------------------|
| i. Zion's auto loan  | approx. \$6,210.00 |
| ii. UCCU Credit card | approx. \$1,800.00 |

b. Defendant shall pay and hold Plaintiff harmless on the following debts:

- |                                   |                     |
|-----------------------------------|---------------------|
| i. First Security Bank, 1st Mort  | approx. \$61,286.00 |
| ii. First Security Bank, 2nd Mort | approx. \$22,100.00 |

#### **TAXES**

20. Plaintiff should be entitled to claim the parties' minor children as a deduction for income tax purposes for all future years if she is current on her child support payments.

#### **ALIMONY**

21. Neither Plaintiff nor Defendant should be awarded alimony.

**WHEREFORE**, Plaintiff prays judgment against the Defendant as follows:

1. For a Decree of Divorce.
2. For an award of custody, visitation and child support.

3. For a reasonable and equitable division of the personal property of the parties.
4. For all other relief as stated herein and such other and further relief as to the Court may seem just and proper in these premises.

DATED this 3rd day of August, 1995.

Rebekah Ann Kopp  
REBEKAH ANN KOPP, Plaintiff

**VERIFICATION**

Rebekah Ann Kopp, after being duly sworn upon her oath, deposes and says:

I am the Plaintiff above-named. I have read the foregoing Verified Complaint for divorce and I know and understand the contents of the Complaint for divorce and the allegations contained therein are true to the best of my knowledge, information, and belief.

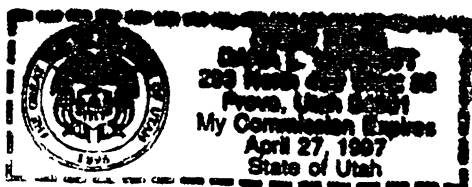
As to such matters alleged upon information and belief, I believe those allegations to be true.

DATED this 3rd day of August, 1995.

Rebekah Ann Kopp  
REBEKAH ANN KOPP

State of Utah           )  
                                  :SS.  
County of Utah        )

Subscribed and sworn to before me this 3rd day of August, 1995.



Daniel Van Gort  
Notary Public

## Exhibit B

FILED IN  
4<sup>TH</sup> DISTRICT COURT  
STATE OF UTAH  
UTAH COUNTY

AUG 17 8 36 AM '95

*JK*

M. James Brady (3703)  
BRADFORD, BRADY & RASMUSSEN, P.C.  
Attorneys for Plaintiff  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

MICROFILMED *8/18/95*

File No. 2663.02

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

REBEKAH ANN KOPP,

Plaintiff,

vs.

DON SAMUEL KOPP,

Defendant.

**DECREE OF DIVORCE**

Civil No. 954401702 DA

This matter came on regularly for a default hearing on the 17<sup>th</sup> day of August, 1995, before the Honorable Commissioner Howard Maetani, sitting as District Court Judge Pro Tem. Plaintiff appeared in person and was represented by her counsel, M. James Brady. The Court had before it a Stipulation executed by the parties and Plaintiff's counsel, in which the Defendant consented that his default could be entered and that the matter may be heard on the basis of the Plaintiff's Complaint and the terms of the Stipulation. The Court, after having heard the Plaintiff's testimony, having received the evidence, and having reviewed the Stipulation and pleadings on file herein, and having entered its Findings of Fact and Conclusions of Law does now make and enter the following:



## DECREE OF DIVORCE

1. Plaintiff, Rebekah Ann Kopp, is hereby granted a Decree of Divorce divorcing her from the Defendant, Don Samuel Kopp, upon the grounds that irreconcilable differences have arisen between the parties, making continuation of the marriage impossible.

2. Said Decree of Divorce shall become final and absolute immediately upon its filing and entry in the office of the clerk of the court.

### CHILDREN

3. There have been four (4) children born as issue of this marriage, to wit:

<u>Name</u>	<u>Birthdate</u>	<u>Age</u>
Aubrey Lynn Kopp	12-03-1977	17
Don Samuel Kopp Jr.	06-18-1979	16
Aaron Joseph Kopp	02-18-1981	14
Megan Ann Kopp	11-02-1982	12

4. Plaintiff and Defendant are awarded joint custody of the minor children with Defendant as the primary physical custodian of the children.

5. Plaintiff is awarded liberal visitation as the parties may agree between themselves, but in any event, not less than visitation as defined in Section 30-3-32 through 30-3-27 U.C.A.

### CHILD SUPPORT

6. Plaintiff is ordered to pay to Defendant child support in the amount of \$696.75 commencing September 1, 1995 and continuing thereafter through the month of November, 1995.

Beginning December, 1995, the parties oldest child will have reached the age of eighteen (18) causing a significant change in circumstances such that the child support amount will then be calculated based on there being three minor children of the parties. Plaintiff is ordered to pay Defendant child support in the amount of \$591.24 commencing December 1, 1995, and continuing thereafter until modified by further order of this court.

7. Plaintiff shall pay the monthly child support amount by way of automatic transfer from Plaintiff's bank account to Defendant's bank account, twice monthly, one-half of the obligation to be transferred on or before the 5th day of each month, and one-half of the obligation to be transferred on or before the 20th day of each month. Automatic bank transfer will be made into Defendant's Account No. 31582-2, Savings No. 4, at Universal Campus Credit Union, Provo, Utah.

8. Defendant is ordered to provide health insurance coverage for the minor children of the parties as the same may be available to him through his place of employment. Plaintiff shall continue to maintain the children on her health insurance as the same is available to her through her place of employment, the Plaintiff's insurance to be secondary to that of the Defendant. Each party is responsible for and shall pay 50% of all medical expenses of the minor children not covered by insurance, including, but not limited to: medical, surgical, hospitalization, dental, orthodontic, opthomology, psychological, psychiatric, counseling and others.

### REAL PROPERTY

9. During the course of the marriage, the parties acquired an interest in real property consisting of one residential property located at approximately 2647 West 210 North, Provo, UT. Defendant is awarded the possession and use of the parties' real property until such time as the parties' youngest child reaches 18 years of age, or until her regular school class graduates from high school, whichever is later; or until Defendant remarries; or until Defendant attempts to refinance the property, or add additional encumbrances on title; or until the parties agree to sell the property, whichever event should first occur.

10. Upon the occurrence of one of the events stated in paragraph 11 above, the property shall be sold at a fair market price and the proceeds of the sale shall be applied as follows:

- a. First to the costs of the sale, including a broker's commission, costs of closing and costs of title, but excluding any repairs or maintenance;
- b. Second a reduction by the amount of the balance due on the first mortgage as of June 1, 1995 in the amount of \$61,285.59 and not reduced by the second mortgage.
- c. The balance remaining after deducting for items a. and b. above shall be divided equally between the parties.

11. After sale of the property, Defendant is entitled to keep the difference, if any, between the payoff amount due to the mortgage holders at the time of sale, and the amount due as of June 1, 1995, as stated in paragraph 12. b. above.

12. During his possession and use of the property, Defendant is responsible for payment of all mortgage obligations, and for all maintenance and repairs to the real property, and Plaintiff shall not share in the costs thereof.

### **PERSONAL PROPERTY**

13. Each of the parties are awarded the personal property now in their respective possessions as a full and complete property settlement, subject to the following:

**a. Plaintiff is awarded:**

- i. her personal clothing and effects**
- ii. the 1989 honda Accord Lxi**
- iii. the master bedroom set, except the mattress, including the dresser, night stand, head board and foot board**
- iv. the kitchen hutch and china from her grandmother**
- v. the chintz couch in the living room**
- vi. the white hutch in the living room**
- vii. the living room coffee table**
- viii. the antique lamp which is in her possession**
- ix. the television from the bedroom which is in her possession**
- x. the bread machine which is in her possession**
- xi. the paintings and decorations plaintiff made or acquired**
- xii. the large hutch in the family room**

**xiii. the yellow stoneware dishes**

**xiv. plaintiff's bike which is in her possession**

**b. Defendant is awarded:**

**i. his personal clothing and effects**

**ii. the personal clothing and effects of the minor children**

**iii. all other appliances, furniture, furnishings and household goods not identified above.**

**14. Plaintiff is awarded an interest in Defendant's vested pension and retirement interests which accrued during the course of the marriage.**

**15. Plaintiff has no vested interest in a pension or retirement. Defendant shall not be awarded an interest in any pension or retirement interests of the Plaintiff which vests after the termination of the parties' marriage.**

**16. In the event Defendant assumes responsibility for, and pays in full, the second mortgage obligation against the parties' home, which obligation is currently owed to First Security Bank in the approximate amount of \$22,100.00, Plaintiff shall relinquish her claim to Defendant's vested pension and retirement interests.**

#### **DEBTS AND OBLIGATIONS**

**17. The parties have incurred certain debts and obligations during their marriage, which obligations shall be paid as follows:**

**a. Plaintiff shall pay and hold Defendant harmless on the following debts:**

**i. Zion's Auto Loan                      approx. \$6,210.00**

**ii. UCCU Credit Card                      approx. \$1,800.00**

b. Defendant shall pay and hold Plaintiff harmless on the following debts:

- i. First Security Bank, 1st Mort                      approx. \$61,286.00
- ii. First Security Bank, 2nd Mort                      approx. \$22,100.00

SPOUSAL SUPPORT

18. Neither party shall be awarded alimony from the other and each waives their right to receive alimony from the other.

TAXES

19. Plaintiff is entitled to claim the parties' minor children as a deduction for income tax purposes for all future years if she is current on her child support payments.

DATED this 17 day of August, 1995.

BY THE COURT:



*[Signature]*  
COMMISSIONER MAETANI

## Exhibit C

FILED IN  
4TH DISTRICT COURT  
STATE OF UTAH  
UTAH COUNTY  
SEP 23 4 28 PM '96

~~FILED IN  
4TH DISTRICT COURT  
STATE OF UTAH  
UTAH COUNTY  
SEP 6 1 40 PM '96~~ pd

M. James Brady (3703)  
BRADFORD, BRADY & RASMUSSEN, P.C.  
Attorneys for Plaintiff  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

File No. 2663.02

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

REBEKAH ANN KOPP,

Plaintiff,

vs.

DON SAMUEL KOPP,

Defendant.

**VERIFIED PETITION FOR  
MODIFICATION OF DECREE OF  
DIVORCE**

Civil No. 954401702 DA

Plaintiff, by and through her attorney, hereby petitions the court for modification of the Decree of Divorce previously entered herein, and for causes of action, alleges as follows:

1. On or about the 2<sup>nd</sup> day of August, 1995, a Decree of Divorce was entered herein.
2. Pursuant to paragraph 5 of the Decree of Divorce, I was awarded standard visitation as described in Section 30-3-32 through 30-3-27 U.C.A.
3. Pursuant to paragraph 6 of the Decree, I am ordered to pay child support to Defendant, based on my then current income.
4. Since the entry of the Decree of Divorce, there has been a material change of circumstances which requires this court to modify paragraphs 5 and 6 of the Decree of Divorce.



5. The material changes of circumstances include:

a. I have moved from the state of Utah which makes visitation under the current decree impracticable.


b. I am no longer employed, I am not earning a monthly income, making payment of child support as ordered in the Decree impossible.

c. I have given birth to an additional child which must be taken into consideration in determining my child support obligation as modified.

6. Based on the foregoing change of circumstances, it is appropriate that this court modify Paragraph 5 of the Decree of divorce, to establish an appropriate visitation schedule while I reside outside of the state of Utah, or more than 150 miles from my children.

7. Based on the foregoing change of circumstances, it is appropriate that this court modify paragraph 6 of the Decree of Divorce to establish a child support obligation consistent with my current ability, or inability as the case may be, to pay.

DATED this \_\_\_\_ day of August, 1996.

  
REBEKAH ANN KOPP  
Plaintiff

VERIFICATION

Rebekah Ann Kopp, after being duly sworn upon her oath, deposes and says:

I am the Plaintiff above-named. I have read the foregoing Verified Petition to Modify Decree of Divorce and I know and understand its contents and the allegations contained therein

are true to the best of my knowledge, information, and belief.

As to such matters alleged upon information and belief, I believe those allegations to be true.

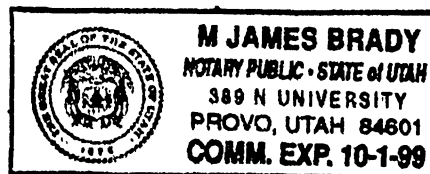
DATED this 15 day of August, 1996.

Rebekah Ann Kopp  
REBEKAH ANN KOPP

State of Utah            )  
                                  :ss.  
County of Utah         )

Subscribed and sworn to before me this 15 day of August, 1996.

[Signature]  
Notary Public



## Exhibit D

MBT

File No. 2663.03

**REBEKAH ANN KOPP (JAHN),**  
Plaintiff,  
**vs.**  
**DON SAMUEL KOPP,**  
Defendant.

Civil No. 954401702 DA  
Judge Howard H. Maetani

## STATEMENT OF FACTS

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE STIPULATION**

should trust him. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

2. After numerous discussions, the parties finally agreed during either the last part of November or first part of December, that Plaintiff would quit claim her part of the property over to Defendant, which would allow him to refinance the loan on the house. Defendant could also use \$15,000.00 of Plaintiff's equity in the house toward supporting the children and in exchange he would no longer seek future child support payments nor seek payments of the arrearages. It was also agreed to by the parties that the remainder of the Plaintiff's equity in the home would be put in a trust account for the children, with Plaintiff as a sole trustee and administrator. This money would be used for airline tickets, phone bills, etc. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

3. After coming to this mutually acceptable resolution, Defendant told Plaintiff that he would speak with his attorney for the purpose of drafting up the agreement. See Affidavit of Rebekah Ann Jahn.

4. On February 11, 1997, Defendant's attorney prepared a Stipulation and submitted it to Plaintiff's counsel. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

5. Plaintiff, upon reviewing the Stipulation, immediately noticed that the terms that were included in the agreement were not the same terms that the parties had previously agreed upon. As such, Plaintiff declined from signing the agreement. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

6. Defendant continued to call Plaintiff trying to intimidate her into signing the

agreement his attorney had drafted. Defendant called so many times that Plaintiff began to not to pick up the phone until she knew who was calling. One time Defendant had their son Aaron call Plaintiff and ask her why she had not signed the agreement. Plaintiff had always been very careful about keeping their children out of the problems between them. Plaintiff was in the middle of explaining this to Aaron when Defendant came on the phone. He told Plaintiff he wanted Aaron to hear for himself why Plaintiff was creating havoc in their lives by not signing the Stipulation. Plaintiff told Defendant that the way it was written the Stipulation did not represent what they had agreed on. Several days later Defendant called Plaintiff back and the parties reworked the issues that concerned her regarding the Stipulation. Defendant told Plaintiff that he could not afford to have his attorney write up another agreement. Plaintiff told Defendant that she would have her attorney draft the Stipulation. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

7. Before Plaintiff presented the terms of the Stipulation to her attorney, she spoke to Defendant and read back to him on the phone the points they had agreed on. Plaintiff wanted to make sure that she would not be wasting any more time or money on the matter. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

8. Plaintiff also told Defendant that she would release the quit claim deed to him only after he had signed the Stipulation. The following were the terms of their agreement as set forth in the final Stipulation. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

a. It was agreed that the monies would be used to pay off the first and second

mortgages in the amounts of \$59,000.00 and \$24,259.10 respectively.

**b.** It was agreed that once the two mortgages were paid off, a portion of the monies would be used for back child support payments in the amount of \$7,987.00. This figure was calculated up until the month of February, 1997.

**c.** All monies remaining were to be put into an account in Defendant's name specifically, to be used for the improvement of the house at 2647 West 2210 North, Provo, Utah; medical , dental, and orthodontic expenses for the children above and beyond that which was covered by Defendant's insurance; telephone charges generated by the children to call New York; airline tickets to visit New York; and any and all future child support payments were to come from this account. The statements from this account were to be duplicated by the bank with a copy going to each concerned. Defendant agreed to maintain and send copies of all receipts to Plaintiff.

**d.** It was agreed that there shall be no further loans or encumbrances against the title, or refinancing of the home after the Stipulation was signed.

**e.** When both parties agreed to the sale of the home, or at the time of emancipation of all the children, the house was to be sold and the proceeds of the sale should have been applied as follows:

**i.** First, to the cost of the sale including the brokers commissions, if a broker is used (cost of closing and cost of title).

**ii.** Second, a reduction by the amount of the balance of the mortgage

due on the date of the sale of said property.

**iii.** Third, any monies left over were to be divided equally by Defendant and the trust fund for the children, including Malorie Rebekah Jahn with Plaintiff Rebekah A. Jahn designated the trustee with full discretionary power over its distribution.

**f.** Plaintiff waived all interest in Defendant's pension provided that the provisions of the Stipulation were followed.

**9.** Plaintiff received a copy of the Stipulation, the terms of which are cited above, from her attorney on March 7, 1997. Plaintiff signed the Stipulation and sent it to her attorney. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A"; See Final Stipulation attached as Exhibit "B."

**10.** On March 19, 1997, Plaintiff's counsel faxed to Defendant's counsel a copy of the final Stipulation. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A"; See Final Stipulation attached as Exhibit "B."

**11.** Defendant has never signed the Stipulation. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A"; See Final Stipulation attached as Exhibit "B."

**12.** Defendant, however, called Plaintiff numerous times asking for the quit claim deed and telling her that if he could not refinance the home soon he would be forced to sell the house. Plaintiff did not want her children to experience the stress that the possibility of this action would create. Plaintiff told Defendant to proceed with the refinancing and as soon as he



signed the Stipulation Plaintiff would be more than happy to give the quit claim deed to him. Defendant told Plaintiff he needed the deed immediately and that he could do nothing until he had the deed. Defendant also told Plaintiff that she should trust him. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

**13.** Plaintiff's attorney had the quit claim deed. Plaintiff, not wanting to see her children become homeless and believing the Respondent would sign the Stipulation, phoned her attorney and told him that she would have her parents come and get it and that Defendant would pick up the deed from them. Plaintiff phoned her parents and asked them to pick it up. Plaintiff's parents picked up the deed the next day and Defendant instantly picked it up from them. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

**14.** On April 16, 1997, Plaintiff's found out that Defendant had terminated his counsel's representation. Plaintiff then called Defendant and asked him what had happened and why he had not sign the Stipulation yet. He told Plaintiff that he would not sign the agreement because he did not want to allow Plaintiff's daughter Malorie from her second marriage to have any rights to any of Plaintiff's remaining equity. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

**15.** Plaintiff became upset stating that she had only agreed to send him the quit claim because he had promised her he would sign the Stipulation. Defendant told Plaintiff that unless she changed the last paragraph excluding Malorie from receiving any part of the agreement that he would never sign the agreement. Plaintiff told him that she was not willing to make that

change and for him to sign it based on her agreement. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

16. Defendant also told Plaintiff that as far as the courts were concerned, the house was his. Defendant also told Plaintiff that if she took him to court he had a line of equity he could use on the home and he would use it up until nothing was left after the sale of the home. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

17. Defendant also told Plaintiff that the house was his any way because he had paid the mortgage all the years they were married and that since she did not work until the last six years of the marriage, the house was not hers. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

18. Plaintiff performed her end of the settlement agreement by quit claiming the property to Defendant. Defendant has yet to perform on his part of the settlement agreement by signing the Stipulation. See Affidavit of Rebekah Ann Jahn attached as Exhibit "A."

## **ARGUMENT**

### **POINT I**

#### **THE LAW ON ENFORCEMENT OF SETTLEMENT AGREEMENTS**

The laws of Utah favor the settlement of disputes. Goodmanson v. Liberty Vending Sys., 741 P.2d 938, 942 (Utah 1987). It is in the power of the trial court to enforce a settlement agreement if there is an enforceable contract. John Deere Co. v. A&H Equipment, 976 P.2d 880, 883 (Utah App. 1994). The Utah Court of Appeals has held that it will affirm the enforcement of

a settlement agreement if the record establishes a binding agreement and the excuse for nonperformance is comparatively unsubstantial. Id. at 884 (citations omitted). The decision of a trial court to summarily enforce a settlement agreement will not be reversed on appeal unless it is shown that there was an abuse of discretion. Mascaro v. Davis, 741 P.2d 938 (Utah 1987).

Whether a court should enforce such a settlement agreement does not turn merely on the character of the agreement. An agreement of compromise and settlement constitutes an executory accord. O&A Drywall, Inc. v. Whitmore Construction Co., 608 P.2d 626, 629 (Utah 1980) (citing Cox Construction Co. v. State Road Commission, 583 P.2d 85-87 (Utah 1978)). Since an executory accord “constitutes a valid enforceable contract” basic contract principles effect the determination of whether a settlement agreement should be enforced. Mascaro, 741 P.2d 942; See also Sackler v. Saven, 897 P.2d 1217 (Utah 1995).

Moreover, a Plaintiff seeking enforcement of a settlement agreement has the burden of showing that the offer and acceptance of the settlement agreement were more probable than not. Sackler, 897 P.2d 1217. The contract is not formed unless there is a meeting of the minds. Id. However, in order for a Stipulation to be enforced, it does not need to be signed, filed with the court, or entered upon the minutes of the court. In John Deere, the Court of Appeals upheld the trial court’s enforcement of a settlement agreement that had been negotiated by the parties’ attorneys, even though it was neither signed by the attorneys, filed with the court, nor entered upon the minutes of the court. The party in the enforcement in John Deere argued that Utah Code Section 78-51-31(2) and Utah Rule of Judicial Administration 4-504(8) required that

before an order was to be enforced, a settlement agreement must have been signed by the attorneys and filed with the court or read into the minutes of the court. The court of appeals found that there was no such requirement. Rather, the rules were “not intended to change existing law with the expect to the enforceability of written contracts.” Furthermore, new subsection (10) provides that “ nothing in this rule shall be construed to limit the power of any court, upon a proper showing to enforce the settlement agreement or any other agreement which had not been reduced to writing.” John Deere, at 887 (quoting Utah Code Jud. Admin. Rule 4-504).

## **POINT II**

### **THE FACTS OF THIS CASE CLEARLY ESTABLISH THAT THE PARTIES REACHED A BINDING AGREEMENT**

In the present situation, there was an enforceable contract. The parties had come to a meeting of the minds as to the terms of the contract. Their negotiations had started in November and only after two drafts of the Stipulation did they finally come to an agreement in February on the terms of the Stipulation. Defendant had no excuse for not signing the Stipulation.

Defendant cannot argue that he did not accept the terms of the Stipulation. It was he who approached Plaintiff in the first place in November of 1996, regarding the refinancing of the house and kept pushing the issue until Plaintiff agreed to sign a quit claim deed to him. Prior to receiving the quitclaim deed, Defendant stood to benefit more than Plaintiff did by having the Stipulation. The home would be in his name. Both mortgages would be paid off. All back child support would be paid off. The remaining monies were to be put in an account in his name to be

used for improvements on the house, medical, dental and orthodontic expenses for the children, telephone charges and airline bills to New York.

Now that Defendant has lied and manipulated Plaintiff into signing the quit claim deed to him and he has refinanced the home, Defendant is now unwilling to follow through on the remaining terms of the Stipulation. Instead he is arguing that on top of getting all the equity in the house, Plaintiff also owes him past due child support, future child support, phone bill costs and travel expenses for the children. In other words he is renegeing on the parties' agreement in order to have double recovery.

Moreover, both the draft and the final version of the Stipulation had clauses within them that evidenced that the Stipulation was to be signed at the same time Plaintiff quit claimed the property to Defendant. The draft Stipulation stated "Plaintiff shall execute a quit claim deed in favor of Defendant concurrently with the signing of the Stipulation conveying any and all interest she may have therein to Defendant." While this first Stipulation had to be revised in order to more accurately reflect the parties' intention, it does show that there was an intent on behalf of the parties to have the quit claiming and the executing of the Stipulation occur at the same time. The final Stipulation also stated "Plaintiff shall execute a quit claim deed in favor of Defendant concurrently with the signing of this Stipulation conveying any and all interest she may have there unto Defendant under the and subject to the terms and conditions listed in (a) through (f) of the Stipulation."

Plaintiff has already performed her end of the agreement by quit claiming her interest in

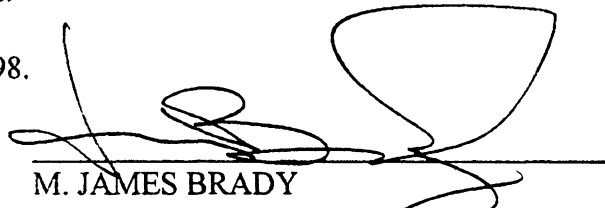
the property to Defendant. Defendant has never executed the Stipulation. Instead he is claiming that he owns the property free and clear of her AND that she still owes her back child support, will need to pay him future child support, pay for all medical, dental, orthodontic bills, pay for all future travel expenses and pay for all phone bills for the children. He is also claiming now that she has no right to any of the remaining money that may be left over the property after the property is sold someday in the future.

The current case is much like the case in John Deere, for the parties negotiated the settlement and each side made an offer or counter offer. When an apparent agreement was made, the attorney submitted the proposals to their clients. Unlike John Deere, the parties both agreed to the Stipulation and Utah law requires nothing more for the Stipulation to be enforceable.

### CONCLUSION

The parties came to an agreement wherein Plaintiff would sign a quit claim deed to the property upon Defendant signing the final Stipulation. Defendant has never signed the Stipulation, but Plaintiff has given Defendant the quit claim deed in order to not jeopardize Defendant's opportunity to refinance the home. Defendant does not have a substantial excuse for not performing the agreement. The court should therefore enter an order enforcing the terms of the Stipulation reached between the parties.

DATED this 27 day of May, 1998.



M. JAMES BRADY  
KIM H. BUHLER  
Attorneys for Plaintiff

# **EXHIBIT “A”**

***(Affidavit of Rebekah Ann Kopp)***

M. James Brady (3703)  
Kim H. Buhler (7155)  
**BRADFORD, BRADY & JOHNSON**  
Attorneys for Plaintiff  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

File No. 2663.03

**IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH**

**REBEKAH ANN KOPP (JAHN).**

Plaintiff,

vs.

**DON SAMUEL KOPP,**

Defendant.

**AFFIDAVIT OF  
REBEKAH ANN KOPP**

Civil No. 954401702 DA  
Judge Howard H. Maetani

STATE OF UTAH     )  
                              ss.  
COUNTY OF UTAH    )

I, Rebekah Ann Jahn, being first duly sworn and under oath do hereby state as follows:

1.     I am the Plaintiff in the above-entitled action. I have first-hand knowledge of all information contained in this Affidavit. I am competent to testify before this Court, and if called upon would do so consistent with the information contained herein.

2.     In November 1997, Defendant Don Samuel Kopp, contacted me to tell me he wanted to refinance our house for \$108,000.00. We had numerous conversations during November and he wanted me to quit claim my part of the home to him. I told him I was uncomfortable quit claiming the property to him because I didn't want to lose my part of the equity in the house. He

AFFIDAVIT OF REBEKAH ANN  
JAHN



kept calling me throughout November and December, trying to convince me to sign a quit claim deed to him. He told me that he would not cheat me out of my interest in the home and that I should trust him.

3. We finally agreed, during either the last part of November or first part of December, that if I quit claimed the property over to him, which would allow him to refinance the loan on the house, he could use \$15,000.00 of my equity in the house toward supporting the children and in exchange he would no longer seek future child support payments nor seek payments of the arrearages. It was also agreed to by Don and myself that the remainder of the Plaintiff's equity in the home would be put in a trust account for the children, with Plaintiff as a sole trustee and administrator.

4. After coming to this mutually acceptable resolution, Defendant told me that he would speak with his attorney for the purpose of drafting up the agreement. Upon receiving the agreement from my attorney, I immediately noticed that the terms that were included in the agreement were not the same terms we had previously agreed upon. As such, I declined from signing the agreement.

5. The Defendant continued to call me trying to intimidate me into signing the agreement his attorney had drafted. He called so many times that I began not to pick up the phone until I knew who was calling. Once he had our son Aaron call and ask why I hadn't signed the agreement. I have always been very careful about keeping my children out of the problems between their father and myself. I was in the middle of explaining this to Aaron when Defendant came on the phone. He told me he wanted Aaron to hear for himself why I was creating havoc in their lives by not signing the Stipulation. I told him that the way it was written, it did not represent what we

had agreed on.

6. Several days later the Defendant called me again. We flushed out some of the issues that concerned us regarding the draft stipulation. Defendant told me that he could not afford to have his attorney write up another agreement. I told him that I would have my attorney draft the stipulation.

7. Before I presented the terms of the stipulation to my own attorney though, I spoke to the Defendant and read back to him on the phone the areas we had agreed to. I wanted to make sure that I would not be wasting any more time or money on the matter.

8. I also told him that I would release the quit claim deed to him once he had signed the agreement. At that point he could refinance the house. The following were the terms of our agreement as set forth in the stipulation attached as Exhibit "A".

a. It was agreed that the monies would be used to pay off the first and second mortgages in the amounts of \$59,000.00 and \$24,259.10 respectively.

b. It was agreed that once the two mortgages were paid off, a portion of the monies would be used for back child support payments in the amount of \$7,987.00. This figure was calculated up until the month of February, 1997.

c. All monies remaining were to be put into an account in Defendant's name specifically, to be used for the improvement of the house at 2647 West 2210 North, Provo, Utah; medical, dental, and orthodontic expenses for the children above and beyond that which was covered by Defendant's insurance; telephone charges generated by the children to call New York; airline tickets to visit New York; and any and all future child support

payments were to come from this account. The statements from this account were to be duplicated by the bank with a copy going to each concerned. Defendant agreed to maintain and send copies of all receipts to me.

d. It was agreed that there shall be no further loans or encumbrances against the title, or refinancing of the home after the Stipulation was signed.

e. When both parties agree to the sale of the home, or at the time of emancipation of all the children, the house was to be sold and the proceeds of the sale should have been applied as follows:

i. First, to the cost of the sale including the brokers commissions, if a broker is used (cost of closing and cost of title).

ii. Second, a reduction by the amount of the balance of the mortgage due on the date of the sale of said property.

iii. Third, any monies left over were to be divided equally by Defendant and the trust fund for the children, including Malorie Rebekah Jahn with Rebekah A. Jahn designated the trustee with full discretionary power over its distribution.

f. I waived all interest in Defendant's pension provided that the provisions of the Stipulation were followed.

9. I received a copy of the stipulation, the terms of which are cited above, from my attorney on March 7, 1997. I signed the Stipulation and sent it to my attorney. The Defendant was very anxious to refinance the home as the interest rates were starting to change.

10. Defendant called me and told me that if he could not refinance the home soon he

would be forced to sell the house. I did not want my children to experience the stress that the possibility of this action would create. I told Defendant to proceed with the refinancing and as soon as he signed the Stipulation I would be more than happy to give the quit claim deed to him. He told me he needed the deed now, right away, and that he could do nothing until he had that document. He also told me that I should trust him.

11. My attorney had the quit claim deed. I phoned my attorney and told him that I would have my parents come and get it and that Don would pick up the deed from them. I phoned my parents and asked them to pick it up. My parents picked up the deed the next day and Don instantly picked it up from them.

12. On April 16, 1997, my attorney wrote me a letter indicating that the Defendant had terminated his counsel's representation. We still had not received the Stipulation from the Defendant by that date. I then called the Defendant and asked him what had happened and why he did not sign the stipulation. He told me that he would not sign the agreement because he did not want to allow my daughter Malorie from my second marriage, to have any of my remaining equity.

13. I became upset stating that I had only agreed to send him the quit claim because he had promised me he would sign the stipulation. He told me that unless I changed the last paragraph excluding Malorie from receiving any part of the agreement that he would never sign the agreement. I told him that I was not willing to do that. He also told me that as far as the courts were concerned, the house was his. He also told me that if I took him to court he had a line of equity he could use on the home and he would use it up until nothing was left after the sale of the home.

14. He told me once again that the house was his any way because he had paid the

mortgage all the years we were married and that since I did not work until the last six years of our marriage, the house was not mine.

15. I performed my end of the agreement by quit claiming the property. Don has yet to execute the Stipulation.

DATED this \_\_\_\_ day of May, 1998.

Rebekah Ann Jahn  
REBEKAH ANN JAHN UTAH DL # 8290200  
Plaintiff

On the 27 day of May, 1998, personally appeared before me Rebekah Ann Jahn, the signer of the foregoing instrument, who duly acknowledged to me that she executed the same.

[Signature] 5/27/98  
NOTARY PUBLIC

WITA M. SCATURRO  
Notary Public, State of New York  
No. 4902561  
Qualified in Suffolk County  
Term Expires 8/12/1999

# **EXHIBIT “A”**

*(Stipulation)*

M. James Brady (3703)  
 BRADFORD, BRADY & JOHNSON, L.L.C.  
 Attorneys for Plaintiff  
 389 North University Avenue  
 Provo, Utah 84601  
 (801) 374 6272

File No. 9663.02

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IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
 STATE OF UTAH

---

REBEKAH ANN KOPP,

Plaintiff,

vs.

DON SAMUEL KOPP,

Defendant.

**STIPULATION**

Civil No. 954401702 DA  
 Judge Howard H. Mactani

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The parties, Rebekah Ann Kopp, Plaintiff, and Don Samuel Kopp, Defendant, hereby agree and stipulate as follows:

1. On or about September 6, 1996, Plaintiff herein filed a Verified Petition for Modification of Decree of Divorce with this Court.
2. On or about October 11, 1996, Defendant filed an answer to that Petition.
3. The parties, by way of this Stipulation, desire to completely and fully settle all issues arising from the Verified Petition for Modification.
4. Each party agrees that the terms and conditions of this Stipulation are fair and just and that each party has entered into this Stipulation with a full knowledge and understanding of the consequences resulting therefrom.
5. Each party represents that there has been a full and complete disclosure to the other party of any and all relevant facts and circumstances that might influence each party's decision to enter into this Stipulation.

6. Paragraph 6 of the Court's Decree of Divorce shall be modified to read as follows: Plaintiff is currently unemployed and not earning any money. Defendant is employed and earns the amount of \$2,369.24 per month. For this reason, Plaintiff shall not pay any amount of child support to the Defendant at the present time. This Order shall continue hereafter until modified by further Order of this Court.

7. Paragraph 7 of the Court's Decree of Divorce shall be modified to read as follows: During the course of the marriage, the parties acquired an interest in real property consisting of one residential property located at approximately 2647 West 210 North, Provo, Utah. Defendant retained any and all interest in the real property for his benefit and use. Plaintiff shall execute a Quit-Claim Deed in favor of the Defendant concurrently with the signing of this Stipulation conveying any and all interest she may have therein to the Defendant. Defendant's ownership of the property is subject to the following terms and conditions:

a. Defendant will obtain a loan in the amount of \$108,000 and grant a trust deed against the property to secure the loan.

b. From the proceeds of the loan, the existing first and second mortgages in the approximate amounts of \$59,000 and \$24,259.10 will be paid in full and their trust deeds reconveyed.

c. Of the remaining proceeds of the loan, \$7,987.00 will be paid to Defendant, and Plaintiff will be credited for payment of all back child support obligations and will be deemed current on all child support payments.

d. The remainder of the proceeds will be put in a bank account under Defendant's sole control to be used solely for improvements to the property; payments of medical, dental and orthodontic services not covered by Defendant's insurance; payment



of all long distance telephone charges generated by the parties children calling New York and the childrens' airline tickets to visit New York; and, any and all future child support payments which the Court may order in the future, if any. Defendant shall cause copies of each bank statement and all invoices and receipts relating to this account to be sent promptly to Plaintiff.

e. No further loans or encumbrances against the title, nor refinancing of the home shall occur without consent of Plaintiff.

f. When both parties agree to sell the home, or upon the emancipation or age of majority of all the children, whichever should first occur, the house shall be sold and the proceeds of the sale shall be applied as follows:

i. Payment in full of the existing mortgages and taxes owed at time of sale.

ii. Actual costs of sale, with no commission nor brokers fees to be paid to either party.

iii. The remaining money is to be divided equally between Defendant and a trust fund to be established by Plaintiff, to be used solely for the benefit of the parties' minor children and Plaintiff's child Malorie Rebekah Jahn with Plaintiff serving as trustee with full discretionary power over the distribution of the trust funds and income, for the benefit of the children.

8. Paragraph 14 of the Court's Decree of Divorce shall be modified to read as follows: Plaintiff shall not be awarded an interest in any pension or retirement interest of the Defendant either prior to, during or after the termination of the parties' marriage.

9. Paragraph 19 of the Court's Decree of Divorce shall be modified to read as follows: Defendant is entitled to claim the parties' minor children as a deduction for income tax purposes for all future years.

10. The parties request that the Court enter an Order of Modification consistent with the terms and conditions of this Stipulation.

DATED this 10<sup>th</sup> day of March, 1997.

Rebekah Ann Kopp  
REBEKAH ANN KOPP

SUBSCRIBED AND SWORN this 10<sup>th</sup> day of March, 1997.

[Signature]  
NOTARY PUBLIC

PETER L. VIRGILIO  
NOTARY PUBLIC, State of New York  
No. 41-4848623  
Qualified in Queens County  
Commission Expires April 28, 1998

DATED this \_\_\_\_ day of March, 1997.

\_\_\_\_\_  
DON SAMUEL KOPP

SUBSCRIBED AND SWORN this \_\_\_\_ day of March, 1997.

\_\_\_\_\_  
NOTARY PUBLIC

# **EXHIBIT “B”**

*(Final Stipulation)*

M. James Brady (3703)  
BRADFORD, BRADY & JOHNSON, L.C.  
Attorneys for Plaintiff  
389 North University Avenue  
Provo, Utah 84601  
(801) 374 6272

File No. 954401702

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

<p>REBEKAH ANN KOPP,  Plaintiff,  vs  DON SAMUEL KOPP,  Defendant.</p>	<p><b>STIPULATION</b>   Civil No. 954401702 DA Judge Howard H. Mactani</p>
--	--

The parties, Rebekah Ann Kopp, Plaintiff, and Don Samuel Kopp, Defendant, hereby agree and stipulate as follows:

1. On or about September 6, 1996, Plaintiff herein filed a Verified Petition for Modification of Decree of Divorce with this Court.
2. On or about October 11, 1996, Defendant filed an answer to that Petition.
3. The parties, by way of this Stipulation, desire to completely and fully settle all issues arising from the Verified Petition for Modification.
4. Each party agrees that the terms and conditions of this Stipulation are fair and just and that each party has entered into this Stipulation with a full knowledge and understanding of the consequences resulting therefrom.
5. Each party represents that there has been a full and complete disclosure to the other party of any and all relevant facts and circumstances that might influence each party's decision to enter into this Stipulation.

6. Paragraph 6 of the Court's Decree of Divorce shall be modified to read as follows: Plaintiff is currently unemployed and not earning any money. Defendant is employed and earns the amount of \$2,369.24 per month. For this reason, Plaintiff shall not pay any amount of child support to the Defendant at the present time. This Order shall continue hereafter until modified by further Order of this Court.

7. Paragraph 7 of the Court's Decree of Divorce shall be modified to read as follows: During the course of the marriage, the parties acquired an interest in real property consisting of one residential property located at approximately 2647 West 210 North, Provo, Utah. Defendant retained any and all interest in the real property for his benefit and use. Plaintiff shall execute a Quit-Claim Deed in favor of the Defendant concurrently with the signing of this Stipulation conveying any and all interest she may have therein to the Defendant. Defendant's ownership of the property is subject to the following terms and conditions:

a. Defendant will obtain a loan in the amount of \$108,000 and grant a trust deed against the property to secure the loan.

b. From the proceeds of the loan, the existing first and second mortgages in the approximate amounts of \$59,000 and \$24,259.10 will be paid in full and their trust deeds reconveyed.

c. Of the remaining proceeds of the loan, \$7,987.00 will be paid to Defendant, and Plaintiff will be credited for payment of all back child support obligations and will be deemed current on all child support payments.

d. The remainder of the proceeds will be put in a bank account under Defendant's sole control to be used solely for improvements to the property; payments of medical, dental and orthodontic services not covered by Defendant's insurance; payment

of all long distance telephone charges generated by the parties' children calling New York and the childrens' airline tickets to visit New York; and, any and all future child support payments which the Court may order in the future, if any. Defendant shall cause copies of each bank statement and all invoices and receipts relating to this account to be sent promptly to Plaintiff.

e. No further loans or encumbrances against the title, nor refinancing of the home shall occur without consent of Plaintiff.

f. When both parties agree to sell the home, or upon the emancipation or age of majority of all the children, whichever should first occur, the house shall be sold and the proceeds of the sale shall be applied as follows:

i. Payment in full of the existing mortgages and taxes owed at time of sale.

ii. Actual costs of sale, with no commission nor brokers fees to be paid to either party.

iii. The remaining money is to be divided equally between Defendant and a trust fund to be established by Plaintiff, to be used solely for the benefit of the parties' minor children and Plaintiff's child Malorie Rebekah Jahn. with Plaintiff serving as trustee with full discretionary power over the distribution of the trust funds and income, for the benefit of the children.

8. Paragraph 14 of the Court's Decree of Divorce shall be modified to read as follows: Plaintiff shall not be awarded an interest in any pension or retirement interest of the Defendant either prior to, during or after the termination of the parties' marriage.

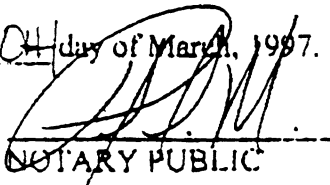
9. Paragraph 19 of the Court's Decree of Divorce shall be modified to read as follows: Defendant is entitled to claim the parties' minor children as a deduction for income tax purposes for all future years.

10. The parties request that the Court enter an Order of Modification consistent with the terms and conditions of this Stipulation.

DATED this 10<sup>th</sup> day of March, 1997.

  
REBEKAH ANN KOPP

SUBSCRIBED AND SWORN this 10<sup>th</sup> day of March, 1997.

  
NOTARY PUBLIC

PETER L. VIRGILIO  
NOTARY PUBLIC, State of New York  
No. 41-4848623  
Qualified in Queens County  
Commission Expires April 28, 1998

DATED this \_\_\_\_ day of March, 1997.

\_\_\_\_\_  
DON SAMUEL KOPP

SUBSCRIBED AND SWORN this \_\_\_\_ day of March, 1997.

\_\_\_\_\_  
NOTARY PUBLIC

## Exhibit E



M. James Brady (3703)  
BRADFORD, BRADY & JOHNSON, L.C.  
Attorneys for Plaintiff  
389 North University Avenue  
Provo, Utah 84601  
(801) 374 6272

File No. 2661.02

---

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

---

REBEKAH ANN KOPP,  vs  DON SAMUEL KOPP,	Plaintiff,   Defendant.	STIPULATION   Civil No. 954401702 DA Judge Howard H. Mactani
---	----------------------------------	--

---

The parties, Rebekah Ann Kopp, Plaintiff, and Don Samuel Kopp, Defendant, hereby agree and stipulate as follows:

1. On or about September 6, 1996, Plaintiff herein filed a Verified Petition for Modification of Decree of Divorce with this Court.
2. On or about October 11, 1996, Defendant filed an answer to that Petition.
3. The parties, by way of this Stipulation, desire to completely and fully settle all issues arising from the Verified Petition for Modification.
4. Each party agrees that the terms and conditions of this Stipulation are fair and just and that each party has entered into this Stipulation with a full knowledge and understanding of the consequences resulting therefrom.
5. Each party represents that there has been a full and complete disclosure to the other party of any and all relevant facts and circumstances that might influence each party's decision to enter into this Stipulation.

6. Paragraph 6 of the Court's Decree of Divorce shall be modified to read as follows: Plaintiff is currently unemployed and not earning any money. Defendant is employed and earns the amount of \$2,369.24 per month. For this reason, Plaintiff shall not pay any amount of child support to the Defendant at the present time. This Order shall continue hereafter until modified by further Order of this Court.

7. Paragraph 7 of the Court's Decree of Divorce shall be modified to read as follows: During the course of the marriage, the parties acquired an interest in real property consisting of one residential property located at approximately 2647 West 210 North, Provo, Utah. Defendant is awarded any and all interest in the real property for his benefit and use. Plaintiff shall execute a Quit-Claim Deed in favor of the Defendant concurrently with the signing of this Stipulation conveying any and all interest she may have therein to the Defendant. Defendant's ownership of the property is subject to the following terms and conditions:

a. Defendant will obtain a loan in the amount of \$108,000 and grant a trust deed against the property to secure the loan.

b. From the proceeds of the loan, the existing first and second mortgages in the approximate amounts of \$59,000 and \$24,259.10 will be paid in full and their trust deeds reconveyed.

c. Of the remaining proceeds of the loan, \$7,987.00 will be paid to Defendant, and Plaintiff will be credited for payment of all back child support obligations and will be deemed current on all child support payments.

d. The remainder of the proceeds will be put in a bank account under Defendant's sole control to be used solely for improvements to the property; payments of medical, dental and orthodontic services not covered by Defendant's insurance; payment

of all long distance telephone charges generated by the parties' children calling New York and the childrens' airline tickets to visit New York; and, any and all future child support payments which the Court may order in the future, if any. Defendant shall cause copies of each bank statement and all invoices and receipts relating to this account to be sent promptly to Plaintiff.

e. No further loans or encumbrances against the title, nor refinancing of the home shall occur without consent of Plaintiff.

f. When both parties agree to sell the home, or upon the emancipation or age of majority of all the children, whichever should first occur, the house shall be sold and the proceeds of the sale shall be applied as follows:

i. Payment in full of the existing mortgages and taxes owed at time of sale.

ii. Actual costs of sale, with no commission nor brokers fees to be paid to either party.

iii. The remaining money is to be divided equally between Defendant and a trust fund to be established by Plaintiff, to be used solely for the benefit of the parties' minor children and Plaintiff's child Malorie Rehekah Jahn, with Plaintiff serving as trustee with full discretionary power over the distribution of the trust funds and income, for the benefit of the children.

8. Paragraph 14 of the Court's Decree of Divorce shall be modified to read as follows: Plaintiff shall not be awarded an interest in any pension or retirement interest of the Defendant either prior to, during or after the termination of the parties' marriage.

9. Paragraph 19 of the Court's Decree of Divorce shall be modified to read as follows: Defendant is entitled to claim the parties' minor children as a deduction for income tax purposes for all future years.

10. The parties request that the Court enter an Order of Modification consistent with the terms and conditions of this Stipulation.

DATED this 10<sup>th</sup> day of March, 1997.

*Rebekah Ann Kopp*  
REBEKAH ANN KOPP

SUBSCRIBED AND SWORN this 10<sup>th</sup> day of March, 1997.

*[Signature]*  
NOTARY PUBLIC

PETER L. VIRGILIO  
NOTARY PUBLIC, State of New York  
No. 41-4848623  
Qualified in Queens County  
Commission Expires April 28, 1996

DATED this \_\_\_\_ day of March, 1997.

\_\_\_\_\_  
DON SAMUEL KOPP

SUBSCRIBED AND SWORN this \_\_\_\_ day of March, 1997.

\_\_\_\_\_  
NOTARY PUBLIC

## Exhibit F

May 27 5 04 PM '98

MBT

M. James Brady (3703)  
Kim H. Buhler (7155)  
BRADFORD, BRADY & JOHNSON  
Attorneys for Petitioner  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

File No. 2663.03

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

REBEKAH ANN KOPP,

Petitioner,

vs.

DON SAMUEL KOPP,

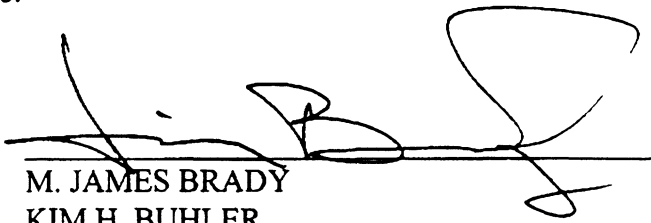
Respondent.

**MOTION TO  
ENFORCE STIPULATION**

Civil No. 954401702 DA  
Judge Howard H. Maetani

COMES NOW the Petitioner in the above entitled action and moves the Court to enter an order enforcing the terms of the Stipulation reached between the parties, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference. In support of this motion, a supporting memorandum and affidavits are filed herewith.

DATED this 27 day of May, 1998.

  
M. JAMES BRADY  
KIM H. BUHLER  
Attorneys for Petitioner

# **EXHIBIT “A”**

*(Stipulation)*

M. James Brady (3703)  
BRADFORD, BRADY & JOHNSON, L.C.  
Attorneys for Plaintiff  
389 North University Avenue  
Provo, Utah 84601  
(801) 374 6272

File No. 2663.02

---

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

---

REBEKAH ANN KOPP,

Plaintiff,

vs

DON SAMUEL KOPP,

Defendant.

**STIPULATION**

Civil No. 954401702 DA  
Judge Howard H. Mactam

The parties, Rebekah Ann Kopp, Plaintiff, and Don Samuel Kopp, Defendant, hereby agree and stipulate as follows:

1. On or about September 6, 1996, Plaintiff herein filed a Verified Petition for Modification of Decree of Divorce with this Court.
2. On or about October 11, 1996, Defendant filed an answer to that Petition.
3. The parties, by way of this Stipulation, desire to completely and fully settle all issues arising from the Verified Petition for Modification.
4. Each party agrees that the terms and conditions of this Stipulation are fair and just and that each party has entered into this Stipulation with a full knowledge and understanding of the consequences resulting therefrom.
5. Each party represents that there has been a full and complete disclosure to the other party of any and all relevant facts and circumstances that might influence each party's decision to enter into this Stipulation.



6. Paragraph 6 of the Court's Decree of Divorce shall be modified to read as follows: Plaintiff is currently unemployed and not earning any money. Defendant is employed and earns the amount of \$2,369.24 per month. For this reason, Plaintiff shall not pay any amount of child support to the Defendant at the present time. This Order shall continue hereafter until modified by further Order of this Court.

7. Paragraph 7 of the Court's Decree of Divorce shall be modified to read as follows: During the course of the marriage, the parties acquired an interest in real property consisting of one residential property located at approximately 2647 West 210 North, Provo, Utah. Defendant retained any and all interest in the real property for his benefit and use. Plaintiff shall execute a Quit-Claim Deed in favor of the Defendant concurrently with the signing of this Stipulation conveying any and all interest she may have therein to the Defendant. Defendant's ownership of the property is subject to the following terms and conditions:

a. Defendant will obtain a loan in the amount of \$108,000 and grant a trust deed against the property to secure the loan.

b. From the proceeds of the loan, the existing first and second mortgages in the approximate amounts of \$59,000 and \$24,259.10 will be paid in full and their trust deeds reconveyed.

c. Of the remaining proceeds of the loan, \$7,987.00 will be paid to Defendant, and Plaintiff will be credited for payment of all back child support obligations and will be deemed current on all child support payments.

d. The remainder of the proceeds will be put in a bank account under Defendant's sole control to be used solely for improvements to the property; payments of medical, dental and orthodontic services not covered by Defendant's insurance; payment

of all long distance telephone charges generated by the parties' children calling New York and the childrens' airline tickets to visit New York; and, any and all future child support payments which the Court may order in the future, if any Defendant shall cause copies of each bank statement and all invoices and receipts relating to this account to be sent promptly to Plaintiff.

e. No further loans or encumbrances against the title, nor refinancing of the home shall occur without consent of Plaintiff.

f. When both parties agree to sell the home, or upon the emancipation or age of majority of all the children, whichever should first occur, the house shall be sold and the proceeds of the sale shall be applied as follows:

i. Payment in full of the existing mortgages and taxes owed at time of sale.

ii. Actual costs of sale, with no commission nor brokers fees to be paid to either party.

iii. The remaining money is to be divided equally between Defendant and a trust fund to be established by Plaintiff, to be used solely for the benefit of the parties' minor children and Plaintiff's child Malorie Rebekah Jahn, with Plaintiff serving as trustee with full discretionary power over the distribution of the trust funds and income, for the benefit of the children.

8. Paragraph 14 of the Court's Decree of Divorce shall be modified to read as follows: Plaintiff shall not be awarded an interest in any pension or retirement interest of the Defendant either prior to, during or after the termination of the parties' marriage.

9. Paragraph 19 of the Court's Decree of Divorce shall be modified to read as follows: Defendant is entitled to claim the parties' minor children as a deduction for income tax purposes for all future years.

10. The parties request that the Court enter an Order of Modification consistent with the terms and conditions of this Stipulation.

DATED this 10<sup>th</sup> day of March, 1997.

Rebekah Ann Kopp  
REBEKAH ANN KOPP

SUBSCRIBED AND SWORN this 10<sup>th</sup> day of March, 1997.

Peter L. Virgilio  
NOTARY PUBLIC

PETER L. VIRGILIO  
NOTARY PUBLIC, State of New York  
No. 41-4848623  
Qualified in Queens County  
Commission Expires April 28, 1996

DATED this \_\_\_\_ day of March, 1997.

\_\_\_\_\_  
DON SAMUEL KOPP

SUBSCRIBED AND SWORN this \_\_\_\_ day of March, 1997.

\_\_\_\_\_  
NOTARY PUBLIC

## Exhibit G

FILED  
4TH DISTRICT COURT  
STATE OF UTAH  
UTAH COUNTY

May 27 5 04 PM '98

WST

M. James Brady (3703)  
BRADFORD, BRADY & JOHNSON  
Attorneys for Plaintiff  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

File No. 2663.02

---

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

---

REBEKAH ANN KOPP,

Plaintiff,

vs.

DON SAMUEL KOPP,

Defendant.


**MAILING CERTIFICATE**

Civil No. 954401702 DA  
Judge Howard H. Maetani

---

On this 27<sup>th</sup> day of May, 1998, a copy of the foregoing *Motion to Enforce Stipulation; and, Memorandum in Support of Plaintiff's Motion to Enforce Stipulation* was mailed by first-class mail, postage paid, to:

Don Samuel Kopp  
2647 West 210 North  
Provo, Utah 84601

  
Secretary

## Exhibit H

Don S. Kopp  
2647 West 200 North  
Provo, Utah 84601

4TH DISTRICT COURT  
STATE OF UTAH  
JUN 2 2 33 PM '98  
MST

---

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

---

REBEKAH ANN KOPP (JAHN),  
PETITIONER,  
VS.

DON SAMUEL KOPP,  
RESPONDENT

**RESPONSE TO MOTION  
TO ENFORCE STIPULATION**

CIVIL No. 954401702 DA  
Judge Howard H. Maetani

COMES NOW the Respondent in the above entitled action and moves the Court hold action in the MOTION TO ENFORCE STIPULATION until the petitioner, REBEKAH ANN KOPP (JAHN) has met her obligation of child support due the respondent, DON SAMUEL KOPP, and furthermore that some information in said STIPULATION Exhibit "A", and STATEMENT OF FACTS that are incorrect be corrected.

DATE this 2 day of June, 1998.



DON SAMUEL KOPP  
Defendant

## Exhibit I



4TH DISTRICT COURT  
STATE OF UTAH  
UTAH COUNTY

JUN 8 4 23 PM '98

M. James Brady (3703)  
Kim H. Buhler (7155)  
BRADFORD, BRADY & JOHNSON  
Attorneys for Petitioner  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

File No. 2663.02

---

IN THE **FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY**  
**STATE OF UTAH**

---

REBEKAH ANN KOPP,

Petitioner,

vs.

DON SAMUEL KOPP,

Respondent.

**REPLY MEMORANDUM IN SUPPORT  
OF PETITIONER'S MOTION TO  
ENFORCE STIPULATION**

Civil No. 954401702 DA  
Judge Howard H. Maetani


Petitioner, by and through her counsel of record, respectfully files her Reply Memorandum in Support of her Motion to Enforce Stipulation. The Respondent in this case has filed his Response to Motion to Enforce Stipulation which is attached as Exhibit "A." In that Motion, he states that some of the information in the Stipulation and Statement of Facts is incorrect but he fails to note which parts of the Stipulation or which Statement of Facts he disputes. Based on his written response this Court has no other option but to rule in the Petitioner's favor and grant her motion to enforce the Stipulation since the Respondent has provided no law, facts or supporting documentation justifying the Court not ruling in favor of the Petitioner's Motion to Enforce Stipulation. The Respondent has also failed to file an opposing Affidavit disputing the Petitioner's claims or her affidavit. It seems his only argument was that the court was to "wait"

to make a ruling on the Petitioner's Motion until after the Petitioner paid child support.

The main problem with this line of reasoning is that in order for the Petitioner to pay the back child support the Stipulation needs to be enforced as requested by the Petitioner. According to the Stipulation, it was agreed that once the Petitioner quitclaimed the home to the Respondent so he could get a second mortgage, the monies would be used to pay off the mortgages and to pay for the back child support. Any remaining monies were to be put in a account in the Respondent's name to be used for the home improvements, medical, dental and orthodontic expenses for the children, telephone charges for the children to call their mother, travel airline tickets and any and all future child support payments etc.

For these enumerated reasons, Petitioner respectfully requests that this Court grant its Motion to enforce Stipulation.

DATED this 8th day of June, 1998.

  
\_\_\_\_\_  
M. JAMES BRADY  
KIM H. BUHLER  
Attorneys for Petitioner

**MAILING CERTIFICATE**

On this 8<sup>th</sup> day of June, 1998, a copy of the foregoing *Reply Memorandum in Support of Petitioner's Motion to Enforce Stipulation* was mailed by first-class mail, postage paid, to:

Don S. Kopp  
2647 West 200 North  
Provo, Utah 84601

Carey Carver  
Secretary

# EXHIBIT “A”

*Response to Motion to Enforce Stipulation*

Don S. Kopp  
2647 West 200 North  
Provo, Utah 84601

---

IN THE **FOURTH** JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

---

REBEKAH ANN KOPP (JAHN),  
PETITIONER,

VS.

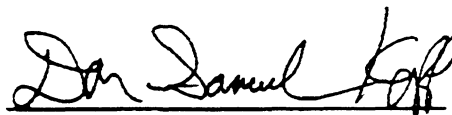
DON SAMUEL KOPP,  
RESPONDENT.

**RESPONSE TO MOTION  
TO ENFORCE STIPULATION**

CIVIL No. 954401702 DA  
Judge Howard H. Maetani

COMES NOW the Respondent in the above entitled action and moves the Court hold action in the MOTION TO ENFORCE STIPULATION until the petitioner, REBEKAH ANN KOPP (JAHN) has met her obligation of child support due the respondent, DON SAMUEL KOPP, and furthermore that some information in said STIPULATION Exhibit "A", and STATEMENT OF FACTS that are incorrect be corrected.

DATE this 2 day of June, 1998.



DON SAMUEL KOPP  
Defendant

## Exhibit J

FILED  
Fourth Judicial District Court of  
Utah County, State of Utah.  
CARMA B. SMITH, Clerk  
JUN 29 1998 Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH**

REBEKAH KOPP	Petitioner,	CASE NO.954401702
vs.		DATE: JUNE 22, 1998
DON KOPP	Respondent,	MINUTE ENTRY
		HOWARD H. MAETANI, JUDGE
		VIDEO: #40 1:26 P.M.
		Clerk: AAD

**ORAL ARGUMENTS**

This matter comes before the Court for a hearing with M. James Brady representing the petitioner. The respondent was present pro se.

Mr. Brady addressed the Court with Oral Arguments on Motion To Enforce the Stipulation. The respondent presented oral arguments and discussion ensued.

Court ordered that no agreement exists. If no agreement is filed by the 29th day of Junet, the Court will set aside the Quit Claim Agreement. Trial date will proceed.

## Exhibit K



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IN THE FOURTH DISTRICT COURT - PROVO  
UTAH COUNTY, STATE OF UTAH

=====

REBEKAH ANN KOPP (JAHN),	)	MOTION HEARING
	)	
Plaintiff-Appellant,	)	Case no. 954401702
	)	
vs.	)	
	)	
DON SAMUEL KOPP,	)	Hon. Howard Maetani
	)	
Defendant-Appellee,	)	Appeal #940014-CA
	)	

-----

BE IT REMEMBERED that this matter came on for  
hearing before the above-named court on June 22,  
1998.

WHEREUPON, the defendant appearing pro se, the  
plaintiff not appearing but represented by counsel,  
the following proceedings were held:

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A-P-P-E-A-R-A-N-C-E-S

FOR PLAINTIFF-APPELLANT:

M. JAMES BRADY, ESQ.  
BRADFORD, BRADY & JOHNSON  
389 NORTH UNIVERSITY AVE  
PROVO UT 84601

FOR DEFENDANT-APPELLEE:

DON SAMUEL KOPP  
PRO SE  
2647 WEST 210 NORTH  
PROVO UT 84601

=====

TABLE OF CONTENTS

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ARGUMENT FOR PLAINTIFF. . . . .	3
ARGUMENT FOR DEFENSE. . . . .	13
DISCUSSION WITH COURT . . . . .	28

=====

E-X-H-I-B-I-T-S

=====

EXHIBIT # PAGE ADMITTED

NONE MARKED

1           P-R-O-C-E-E-D-I-N-G-S.  
2           THE JUDGE: Okay. This is case  
3 #954401702, Kopp, before the court on a motion to  
4 enforce stipulation filed by the  
5 plaintiff-petitioner. Is that correct?  
6           MR. BRADY: That is correct, Your Honor.  
7           THE JUDGE: Okay. Mr. Brady represents  
8 the petitioner-plaintiff and Mr. Kopp representing  
9 himself. Is that correct?  
10          MR. KOPP: That's correct.  
11          MR. BRADY: That's correct.  
12          THE JUDGE: Well, let's hear this motion  
13 then. Go ahead.  
14          ARGUMENT BY MR. BRADY FOR PETITIONER  
15          MR. BRADY: Your Honor, this divorce  
16 dates back several years. Our most recent  
17 involvement began back in August of '96 after the  
18 decree had already been entered, after the parties  
19 had gone about establishing their own new lives as  
20 separated divorced individuals.  
21          My client believes she had a reason to  
22 request a modification of the child support which  
23 she is paying to Mr. Kopp. He was granted custody  
24 in the original decree. She also wanted some  
25 modifications for visitation in that she was living

Page 3

1 we also resolve the children tax claim issue and  
2 also child support arrearage issues and so he and I  
3 had numerous discussions and negotiations.  
4          At this same time the defendant had a  
5 number of communications directly with my client on  
6 many of these same issues.  
7          As a result of all of those negotiations  
8 we came to a point of which Mr. Orr had indicated  
9 to me that his client was ready to sign the  
10 stipulation. I sent that stipulation to my  
11 client. My client reviewed it, signed it, sent it  
12 back to me, I sent it over to Mr. Orr.  
13          Now I will get into the content of that  
14 stipulation to some degree but it's important to  
15 understand the content relates directly to the  
16 actions of the parties during this period of  
17 time.  
18          Part of the content is that my client  
19 would quit claim and release all interest that she  
20 had in the house and quit claim that over to the  
21 defendant and that his ownership of the home would  
22 then be based on certain contractual obligations  
23 that he would have but not in terms of a legal  
24 title. That is legal title would rest with the  
25 defendant but he would have certain contractual

Page 5

1 outside of the state and wanted those issues to be  
2 resolved.  
3          In August of '96 we prepared a verified  
4 petition. Mr. Kopp through his attorney at that  
5 time filed what I would refer to as a general  
6 denial, there was no counterclaim, and basically  
7 admitted some of the allegations, denied others and  
8 the matters were at issue.  
9          From about September or October of '96  
10 through the end of December into perhaps January  
11 and February a number of things came up in the case  
12 that the Court would not normally be aware of.  
13 Mr. Orr contacted my office and spoke with me on  
14 several occasions in an attempt to negotiate not  
15 only the issues that were before the Court but a  
16 number of other issues as we often do that needed  
17 to be discussed. The negotiations covered child  
18 support and visitation but they also discussed a  
19 resolution of the equity in the home that the  
20 parties had that was awarded to them under the  
21 decree. It also addressed the interest that my  
22 client might have in his client's retirement  
23 account that was granted to her in the decree under  
24 certain conditions and we wanted to give a final  
25 resolution to that. Mr. Orr also suggested that

Page 4

1 obligations back to my client with regard to monies  
2 that would be owed and how those monies would be  
3 handled.  
4          My client signed a quit claim deed, sent  
5 it to my office. That was part of the agreement,  
6 part of the stipulation. I was holding the quit  
7 claim deed in my office. My client contacted me  
8 daily asking if he had signed the stipulation. I  
9 contacted Mr. Orr numerous times and Mr. Orr had  
10 indicated that he had sent it off to his client, he  
11 was waiting to hear back, he hadn't heard back, I  
12 would hear back soon.  
13          One day my client contacted me and said  
14 that she was fearful that her children would be in  
15 great danger, not physical danger but great concern  
16 because her husband reported that if he couldn't  
17 refinance the house they would lose it. they would  
18 be without a home, that he had called to tell her  
19 of the great harms that were going to be suffered  
20 if he couldn't refinance the home and that he  
21 needed that quit claim deed to do it. For a  
22 period of a week or two I was able to persuade my  
23 client not to deliver the quit claim deed until the  
24 stipulation was signed. Finally I received an  
25 unequivocal instruction from my client that I was

Page 6

1 to deliver the quit claim deed to the defendant  
2 because he had promised that he would get the  
3 stipulation signed and in and the matter would be  
4 resolved.  
5 The quit claim deed was delivered to the  
6 defendant. The defendant did record the quit claim  
7 deed, he did refinance the house. Through the  
8 refinance process he paid off an existing first and  
9 second mortgage and there were some additional  
10 funds which exceeded the first and second  
11 mortgage. I do not know what he's done with those  
12 funds. In the stipulation there were provisions  
13 for what would happen to the additional funds.  
14 Now in the stipulation it was indicated  
15 that he would be refinancing the house for  
16 \$108,000. In reality the house appears to have  
17 been refinanced for \$98,000. Why there is a  
18 difference I don't know, if he requested less or if  
19 the bank only loaned less but there is that  
20 difference of \$10,000 between what the stipulation  
21 said he would do and what he actually did.  
22 Nevertheless the existing documents, the existing  
23 loans against the house were much less than the  
24 \$98,000. It would have left him nearly \$15,000.  
25 The stipulation provided for what should happen to

Page 7

1 part because of the actions the parties took in  
2 reliance on the verbal stipulation.  
3 In this case, Your Honor, we did not ask  
4 for the house to be quit claimed over, that was not  
5 part of our action. We didn't ask that my client  
6 waive all claim to his retirement, that was not our  
7 issue. We didn't ask that he be given the child  
8 tax right to claim the children for tax purposes.  
9 There were a number of things we didn't ask for but  
10 we were willing to discuss and negotiate. And  
11 finally after it was represented through counsel  
12 that we had a final agreement my client acted on  
13 that. She acted against the advice of her  
14 attorney but she did it because, as has been  
15 outlined in our statement of facts and affidavits,  
16 she was put, placed under great duress by the  
17 defendant to act immediately, threatening that  
18 there would be harm and problems for the  
19 children. This has been detailed. And I'm not  
20 talking about one or two phone calls, I'm talking  
21 about incessant phone calls, I need that quit claim  
22 deed, we're going now, I have to have it. Even  
23 having the children call up and say Mom, can't we  
24 have the quit claim deed. Until finally Mom  
25 relented, gave the quit claim deed once he promised

Page 9

1 the funds in excess of the loan payoffs.

2 My client believed from the beginning to  
3 the end that she had a stipulation, that it was  
4 being resolved. She acted in, on that belief  
5 based on verbal representations made by the  
6 defendant that he would sign the stipulation.  
7 Once he received the quit claim deed his  
8 benefits under that stipulation had been  
9 obtained. He no longer had much need for the  
10 stipulation. And because he then decided that he  
11 disagreed with some of the content of it he wanted  
12 to go through further modifications of the  
13 stipulation which my client was unwilling to  
14 accept.

15 We believe that under the law of Utah he's  
16 bound by the representations made. We have cited  
17 for Your Honor in our memorandum the John Deere  
18 case. Under John Deere the trial court mistakenly  
19 believed that for a stipulation of settlement, a  
20 compromise settlement to be effective it had to be  
21 signed at least by the attorneys if not the  
22 parties. The court in reviewing the John Deere  
23 case, Court of Appeals found that there is no such  
24 requirement. The court upheld the agreement even  
25 though it was not signed by the parties in large

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1 that he would come in and sign the stipulation.  
2 Now in that stipulation the provisions are  
3 very explicit that it resolves the issues now  
4 pending before the court. It deals with child  
5 support arrearages as well as current child support  
6 obligation and future child support obligation.  
7 It deals with visitation. It deals with all of  
8 these other things that are not before the court.  
9 It's our belief that we have an agreement,  
10 it was reached, it has been acted upon, the  
11 defendant has received the benefit of the  
12 agreement. He has now the home under his own name  
13 where he has refinanced it and received proceeds  
14 that under the agreement he's entitled to and he  
15 has done nothing with regard to his quid pro quo  
16 under the agreement.

17 We believe that it's appropriate for the  
18 Court now to declare the stipulation to be  
19 enforceable. The stipulation asks for some very  
20 specific modifications to the decree, it authorizes  
21 those modifications. These are modifications that  
22 the defendant knew were part of the agreement  
23 before he ever requested, pressured and finally  
24 received the plaintiff's actions under the  
25 stipulation. We believe those modifications ought

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1 to be incorporated now into the decree as per their  
2 agreement.

3 I will go through and enumerate those if  
4 Your Honor wishes but they are in all of our  
5 written documentation.

6 The last item that I have to point out is  
7 the discrepancy between the \$98,000 loan and the  
8 \$108,000 loan. We don't want the Court to think  
9 that we are in the process of modifying a decree or  
10 backing-- I'm sorry, modifying an agreement or  
11 backing out of an agreement. We're not. If he's  
12 taken \$98,000 we recognize he's entitled to take  
13 another \$10,000 in terms of equity out of the  
14 house, whether he does that in a loan now or  
15 whether he takes his \$10,000 at the time of the  
16 sale of the house we believe that that additional  
17 \$10,000 in equity is his.

18 Our concern is that the monies in excess  
19 of paying off the first and second mortgage need to  
20 be applied as indicated under the stipulation  
21 towards arrearage, towards child visitation, toward  
22 telephone calls. And there was a large sum of  
23 money that was allowed to him to modify and improve  
24 the home in which he's currently living.

25 We also believe that the other provisions

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1 general sense that he disagrees with some of the  
2 terms of the affidavit and some of the terms of the  
3 statement of fact but didn't identify any of  
4 them. He also says that he wants to make some  
5 modifications to the stipulation but doesn't  
6 identify what those are. I believe that his  
7 response to our motion is wholly inadequate to give  
8 us any notice of what it is he intends to do. I  
9 think that under the law in terms of our motion we  
10 have met our obligation of documenting our  
11 statement of facts. he has not met his obligation  
12 to contest any of the statement of facts.

13 I believe the Court is under an obligation  
14 to accept those facts as stated in determining its  
15 ruling on this motion.

16 THE JUDGE: Okay. Mr. Kopp?

17 ARGUMENT BY MR. KOPP FOR RESPONDENT

18 MR. KOPP: Your Honor, may I just as a  
19 final statement that he just mentioned that I  
20 haven't shown any proof of the documents that are  
21 needed. Attorney Kim Buhler in talking to set up  
22 this argument stated that these things needed to be  
23 presented in person so therefore I do have the  
24 information and do have copies for the Court and  
25 for Mr. Brady.

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1 of the stipulation, all of them need to be enforced  
2 and adhered to and the parties need to act  
3 accordingly.

4 If the Court grants this motion then the  
5 issues of child support and visitation which are  
6 currently pending trial, sorry, I don't recall,  
7 first week, second week in July, would be  
8 resolved. The case would be terminated by way of  
9 the stipulation. If the Court does not grant this  
10 motion then we will be back before the Court to  
11 hear the issues of child support and visitation but  
12 we would also soon be filing a new action in order  
13 to rectify what we believe to be the  
14 misrepresentations or failure on the part of the  
15 defendant to act according to the promises given in  
16 reliance, which were relied upon by my client in  
17 signing over the quit claim deed. We think it's  
18 the more efficient approach to address these issues  
19 in the context of this case.

20 We'd ask the Court to grant our motion.

21 I ought to point out, Your Honor, that as  
22 a matter of practice we went through the process of  
23 identifying statements of fact, we've prepared this  
24 with affidavit with supporting documentation. The  
25 defendant in response has indicated in a very

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1 May I state at first that in August of  
2 1996 I received a statement from Mr. Brady stating  
3 that they wanted to reduce child support payments  
4 and/or wanted an adjustment in child support  
5 payments and the child support and child visitation  
6 rights.

7 At that time I procured a lawyer,  
8 Mr. Jeffrey Orr, and met with him and discussed  
9 what the situation was, what were my options and we  
10 then proceeded to go forward on his  
11 recommendations, Mr. Orr's recommendations to, to  
12 receive the house in my name. That was with the  
13 original statement.

14 As far as documents if you'd like, would  
15 you like me to give you these documents and  
16 Mr. Brady to look at?

17 THE JUDGE: Well I don't know what you're  
18 contesting on his affidavits (short inaudible,  
19 voice dropped).

20 MR. KOPP: Okay. What the deal is is--  
21 Excuse me. What the situation is is I was  
22 contacted in November of 1996 by the plaintiff,  
23 Rebekah Kopp. She called me. Now to verify that  
24 she called me and that I didn't call her to start  
25 this information is--

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1 THE JUDGE: Well that's, that's not  
2 important to prove (short inaudible, two speakers).  
3 MR. KOPP: Well she called-- Okay. She  
4 called me.  
5 THE JUDGE: I, I just need to know  
6 whether she gave you the quit claim deed--  
7 MR. KOPP: Okay.  
8 THE JUDGE: -- and what was in exchange  
9 for the quit claim deed.  
10 MR. KOPP: The exchange for the quit  
11 claim deed at the time was I would send the  
12 children to New York for Christmas. I have here a  
13 statement showing that on November 18th I purchased  
14 four tickets for my children for New York City,  
15 departure on the 22nd, or the 18th of December.  
16 The agreement was is that in talking we,  
17 since she is not paying child support and hadn't  
18 paid child support is that half of the house when  
19 we sold the house would go to me, half of the  
20 proceeds of the house would go to me and the other  
21 half would go to the children. Well, I had my  
22 lawyer write it up, Mr. Orr. And I've got a  
23 statement here that shows that Mr. Orr was to write  
24 this stipulation. They didn't agree to it.  
25 They then in talking to her sent back the

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1 at \$108,000 is because due to her not returning the  
2 quit claim deed and not being able to do it until  
3 February I lost the interest rate and I lost the  
4 loan and so therefore not being able to finance  
5 \$108,000 I had to, the bank says due to the  
6 interest rate which is now at 7-3/4% on a seven  
7 year ARM, he said this is all we can get you now.  
8 So therefore, I'm out that money.  
9 Now the other thing is, is if Your Honor  
10 will look at the stipulation I, in the stipulation  
11 I'm basically paying for the child support. I told  
12 her and I, and we agreed to this, is that I'll go  
13 ahead and finance the house, I will then take that  
14 \$7,000 that's left over and pay for your child  
15 support. And, and with her not even helping me out  
16 a bit I want that rescinded because she's not paid,  
17 she has not paid child support since January of  
18 1996. And, and basically what I've done is I've in  
19 this stipulation have said I'll go ahead and  
20 refinance the house, I'll pay for the house, I'll  
21 pay for your child support that you should have  
22 been paying, then when I sell it I'll give you  
23 half, half, some of the money to your child from  
24 this other person. And that's not right.  
25 I also at the time agreed when I said if I

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1 agreement. And if I might just read real quickly  
2 what it states is-- Okay. Excuse me for just a  
3 second. The remaining money is to be divided  
4 equally among the defendants (sic?). This is in  
5 paragraph F, the third paragraph.  
6 MR. BRADY: which document are you  
7 reading from?  
8 MR. KOPP: This is from the stipulation  
9 (in May?) that you wrote up.  
10 MR. BRADY: Okay.  
11 MR. KOPP: The remaining money is to be  
12 divided equally between defendants (sic?) in a  
13 trust fund to be established by plaintiff to be  
14 used solely for the benefit of the parties' minor  
15 children, and the plaintiff's child, Mallory  
16 Rebekah Jahn. The child of her now husband.  
17 In talking on the phone and talking about  
18 children, Your Honor, is a person going to agree in  
19 your, in your estimate, in your views is a person  
20 going to say okay, go ahead, I'm going to let your  
21 child by this other person have proceeds that are  
22 due my own children, our own biological children?  
23 That's one reason why I disagreed with the  
24 statement.  
25 Two, the reason why I could not refinance

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1 would send the children out to New York that I  
2 would also-- At the time I had long distance  
3 restriction on and I went ahead and I've got  
4 documents stating showing that where the long  
5 distance restriction was on and where I took it off  
6 right afterwards.  
7 And Your Honor, I also have here showing  
8 long distance bills that I've paid, that the excess  
9 money that came from refinancing the house was--  
10 Excuse me for just a moment. After the first and  
11 second mortgage was paid off the excess amount was  
12 \$7,239.72. Of that money I have used it to pay  
13 for their tickets back to New York, I've paid for  
14 phone bills, I've paid for school lunches. I've  
15 used that money for the kids. I've paid for my  
16 boy's, she agreed and she wanted me to pay for the,  
17 my boy's college tuition at UVSC. I've done this  
18 with that money and taken care of it. And I even  
19 sent to the defendant (sic) stating, you know, I  
20 started to itemize things but got no response back  
21 from her doing that.  
22 It-- I have a statement here showing that  
23 in 1994 the wages that Rebekah Ann Kopp made were  
24 \$27,632. That's over half of our income. And  
25 then when she failed to continue to pay child

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1 support and, and I've had to get two extra jobs,  
 2 it's been a burden.  
 3 I flatly deny that I called up and  
 4 threatened her saying that the kids were in mortal  
 5 danger. That is a fact that is false. The only  
 6 agreement that I called her about was the, it was  
 7 the agreement that I would send the children out to  
 8 New York if she would send me the quit claim deed.  
 9 And by financing, refinancing the house  
 10 it's, it's helped me immensely to take care of my  
 11 children. But that money is going awful quick.  
 12 And like you said, it's gender bias.  
 13 Your Honor, what if I went to New York and I got  
 14 someone pregnant and she knew that she was pregnant  
 15 in September of '96 and if I went, or October of  
 16 '96. If I went to New York and got somebody  
 17 pregnant and decided well, I'm going to leave my  
 18 family, I'm going to walk off, when my wife or  
 19 girlfriend has the child I'll stay home and watch  
 20 the baby, forget about my four children out here,  
 21 I'll just take care of her.  
 22 Rebekah Ann Kopp Jahn is quite a capable  
 23 woman to be able to work. She has talents in tole  
 24 painting, she has talents in police criminal work,  
 25 she has talents to do that. She had the

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1 mortgage. Some, some of that second mortgage  
 2 deals with plane trips back to New York, \$500 phone  
 3 bills. You can see, and I wish I would have  
 4 brought them, the phone bills before I found out  
 5 that she had had an affair, coming back and seeing  
 6 a \$500 phone bill. I have phone bills here from  
 7 this last six months totalling \$453 that-- And  
 8 right now I again had to take off the, the long  
 9 distance but I did buy my children a 120 minute  
 10 calling card. She has, she hasn't even tried to  
 11 do that. I asked her if she could send a calling  
 12 card to us, give your children a calling card.  
 13 So, you know, due to that, the not getting  
 14 the \$108,000, \$108,000 on the refinance, due to  
 15 the, the deal that she hasn't paid her child  
 16 support and that's waiting, due to that she wants  
 17 some of the proceeds of the house to her child.  
 18 Now I understand it's the law that she  
 19 gets half of the house and if, if they had stated  
 20 that that she could have that--  
 21 THE JUDGE: Well let me, let me correct  
 22 you. It's not the law but that was part of the  
 23 agreement--  
 24 MR KOPP: Okay.  
 25 THE JUDGE: -- or it was contested, you

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1 opportunity to work after she left to go back to  
 2 New York before she had the baby. And why she  
 3 didn't file this beforehand is a good question.  
 4 Why if she knew in October of 1996 she was  
 5 pregnant, she wasn't married at the time, she  
 6 wasn't married after she had the baby.  
 7 And Your Honor, I just, I've tried to do  
 8 everything I can to raise my four children. I've  
 9 allowed, I've paid for them to go back to New York,  
 10 they can go back there any time.  
 11 The house had I known--  
 12 And it all comes down to this. Had she  
 13 paid her obligation stated in the divorce decree  
 14 that she was to pay her child support none of this  
 15 would have been necessary. I could have gone on  
 16 and continued to pay the second mortgage and  
 17 continued to do that. But with her not paying her  
 18 child support payment and losing half of an  
 19 income.  
 20 And on this child support on the second  
 21 mortgage, the second mortgage was entered into in I  
 22 believe January of 1995. It was in February of '95  
 23 that I found out that she was having an affair. I,  
 24 I-- As far as me being stupid I took that upon  
 25 myself to pay and be responsible for that second

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1 know.  
 2 MR. KOPP: Okay.  
 3 THE JUDGE: Now usually we try to divide  
 4 it equally but--  
 5 MR. KOPP: Right. Now one other  
 6 thing. On this phone conversation in November of  
 7 1996, it's then I also learned that she was going  
 8 to file bankruptcy. I went to Jeff Orr, Mr. Orr  
 9 and stated this. He says, he told me at that time  
 10 if the creditors want to come back they can come  
 11 back and take the house. She owed quite a bit of  
 12 money. I have statements in my office when I had  
 13 to refinance the house of how much she owed in, in  
 14 credit card bills, etcetera. Mr. Orr informed me  
 15 if she files bankruptcy the creditors can come back  
 16 and take the house. I received notification in, it  
 17 was September of '97 that she was going to file.  
 18 At that time she said she wasn't going to file.  
 19 She wouldn't do that.  
 20 THE JUDGE: What notice do you have of  
 21 her bankruptcy?  
 22 MR. BRADY: She filed bankruptcy. Your  
 23 Honor. It's been discharged. It has gone through  
 24 the system and been discharged.  
 25 MR. KOPP: Yes.

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1 THE JUDGE: When did she file for  
2 bankruptcy?  
3 MR. KOPP: November of, or September  
4 of-- I've got the form right here, Your Honor.  
5 THE JUDGE: September when?  
6 MR. BRADY: 7th.  
7 MR. KOPP: 9-7-97 and it was finalized  
8 on 12-24-97.  
9 THE JUDGE: When did she send you the  
10 quit claim deed?  
11 MR. KOPP: It came--  
12 MR. BRADY: In December the year before.  
13 MR. KOPP: No. The quit claim deed  
14 came in--  
15 MR. BRADY: March.  
16 MR. KOPP: -- March.  
17 MR. BRADY: That's right. March of  
18 '97.  
19 MR. KOPP: March of '97. But  
20 according to my counsel, Mr. Orr, up to a year they  
21 can take that house if they want to get their  
22 payments out of it.  
23 And I also filed with the state for, for--  
24 THE JUDGE: Assistance?  
25 MR. KOPP: -- assistance. I received,

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1 MR. KOPP: And they wrote me back  
2 saying that she's filed bankruptcy in New York and  
3 there's nothing we can do. So I again, Your  
4 Honor, like I said in February--  
5 THE JUDGE: There may be nothing to do  
6 because she may, she probably does not have any  
7 income coming in for them to garnish.  
8 MR. KOPP: That may be the case. But  
9 Your Honor--  
10 THE JUDGE: That doesn't mean forever.  
11 MR. KOPP: Your Honor, like I said in  
12 February I don't think I'll ever see a penny of  
13 this money and it doesn't matter to me whether I  
14 see a penny of the child support. Okay? I have  
15 four children to take care of that I'm taking care  
16 of. And I have a house that I want to be able to  
17 take care of them and that they can use on those  
18 proceeds. I've got a boy that's going on a  
19 mission here in September. And all I ask, and I've  
20 told her, I've told her lawyers and that, let me  
21 have the house, I'll waive the child support  
22 payments, I'll waive the medical and dental.  
23 Which reminds me. In February you also  
24 did state-- There's a \$700 bill owing to our  
25 dentist and you did tell Mr. Brady to please have

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1 and I couldn't find the letter, it may be at home.  
2 I received a letter saying that she has filed  
3 bankruptcy, is no longer, we cannot do a thing for  
4 you. I didn't realize, and I was under the  
5 impression that people had told me that you could  
6 not bankruptcy child support.  
7 THE JUDGE: You can't.  
8 MR. KOPP: Well according to the state,  
9 and if I need to--  
10 THE JUDGE: Oh, no.  
11 MR. KOPP: -- present that they, they  
12 wrote me back saying that they would not assist me  
13 in this, that she's filed bankruptcy.  
14 THE JUDGE: Did you apply for assistance  
15 or to collect child support?  
16 MR. KOPP: To collect.  
17 THE JUDGE: No. They can go after her.  
18 MR. KOPP: And they, they wrote. And I  
19 wish I could have found it. I'll, I'll have to  
20 search. But they wrote me back saying--  
21 THE JUDGE: You just go to the Office of  
22 Recovery Services.  
23 MR. KOPP: I did. And they'll have a  
24 copy of it?  
25 THE JUDGE: Yes. They should.

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1 her send those forms to the dentist. As of today  
2 when I went to, to Kay down at the dentist's office  
3 those forms still have not been sent. She has not  
4 acted on it. And luckily I've known this dentist  
5 all my life, he's being very courteous and kind to  
6 me to be able to say, you know, we'll wait on  
7 this. But the forms still have not been sent.  
8 MR. BRADY: Your Honor, I usually don't  
9 interrupt in an argument and you know that I'm  
10 usually quite lenient. We are getting so far  
11 afield from the issue that's before this Court. We  
12 are going back and rearguing the divorce, we're  
13 rearguing what he would like now to do by way of a  
14 modification and we are now talking about order to  
15 show cause issues.  
16 THE JUDGE: Okay.  
17 MR. BRADY: We are far afield from where  
18 we should be.  
19 MR. KOPP: Then let's, let's-- My  
20 statement--  
21 THE JUDGE: Well, not completely far  
22 off.  
23 MR. KOPP: Well then my statement is,  
24 is that the stipulation shouldn't stand. It  
25 should be voided.

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<p>1 THE JUDGE: Okay.</p> <p>2 MR. KOPP: And that's what my statement</p> <p>3 is is the stipulation is incorrect. There are</p> <p>4 statements on there--</p> <p>5 THE JUDGE: Well as I understand it the</p> <p>6 thing that bothers you on the stipulation is giving</p> <p>7 her present child some kind of interest.</p> <p>8 MR. KOPP: Present child interest and</p> <p>9 also that I'm paying, on that stipulation it's</p> <p>10 showing that I'm paying for her child support.</p> <p>11 THE JUDGE: Okay.</p> <p>12 MR. KOPP: And so you know I just, I</p> <p>13 ask the Court that the stipulation is invalid. My</p> <p>14 lawyer wrote up the stipulation, they didn't sign</p> <p>15 it, they didn't agree to it. I finally said then</p> <p>16 have your lawyer write it up, have Mr. Brady write</p> <p>17 it up. He then did write it up. Now I disagree</p> <p>18 with it but now I'm being told because I disagree</p> <p>19 with it and I won't sign it that the Court's going</p> <p>20 to make me do it. Now there's something wrong</p> <p>21 here because if they wouldn't sign mine then can I</p> <p>22 not go back and say please sign mine then because</p> <p>23 mine doesn't have her daughter in it.</p> <p>24 But that's what my request, my request is</p> <p>25 is that the stipulation be null and void, that we</p> <p style="text-align: right;">Page 27</p>	<p>1 meet on the 2nd of July at 10:00 o'clock where</p> <p>2 child support and visitation rights are to be-- I</p> <p>3 don't even know if visitation rights are to be</p> <p>4 discussed there. I believe your statement was it</p> <p>5 was just child support. You didn't want to hear</p> <p>6 anything about the house, you didn't want to hear</p> <p>7 anything else. It was just child support.</p> <p>8 And that's what I would like to go forward</p> <p>9 with and, and see that the Court, we can do that</p> <p>10 and work on the child support. And I'm fulfilling</p> <p>11 my obligations. And that's--</p> <p>12 THE JUDGE: Okay.</p> <p>13 MR. KOPP: -- basically my statement.</p> <p>14 THE JUDGE: Mr. Brady, I have some</p> <p>15 questions for you now--</p> <p>16 MR. BRADY: Yes.</p> <p>17 THE JUDGE: -- that you may have known</p> <p>18 Mr. (inaudible word) was here. Your client filed</p> <p>19 for bankruptcy. Correct?</p> <p>20 MR. BRADY: Yes.</p> <p>21 THE JUDGE: And to say that if she knew</p> <p>22 she, she was going to file for bankruptcy, she</p> <p>23 conveyed her interest in the home, and it seems to</p> <p>24 me that she avoided her interest from being</p> <p>25 attached by the creditors.</p> <p style="text-align: right;">Page 28</p>
<p>1 MR. BRADY: No, Your Honor. Not at</p> <p>2 all. She disclosed her interest in the home in</p> <p>3 the bankruptcy proceeding. It's a part of the</p> <p>4 file. She indicated that she--</p> <p>5 THE JUDGE: Then, then what--</p> <p>6 MR. BRADY: She indicated that she</p> <p>7 retained one-half interest in the value of the home</p> <p>8 at the time that the home is sold. And that's</p> <p>9 part of the file, that's the way that it's</p> <p>10 disclosed to the bankruptcy court and the</p> <p>11 creditors.</p> <p>12 THE JUDGE: But did she claim-- Why</p> <p>13 didn't she tell them she'd already conveyed her</p> <p>14 interest? It's one thing to say she's got a</p> <p>15 one-half interest in the home. It's another thing</p> <p>16 to say I have no interest in that home, I've</p> <p>17 conveyed it away. The home is not sold yet.</p> <p>18 MR. BRADY: Your Honor--</p> <p>19 THE JUDGE: The trustees, the trustees I</p> <p>20 suppose can come in and try to force the sale of</p> <p>21 the home.</p> <p>22 MR. BRADY: Can I explain to you exactly</p> <p>23 how she disclosed this so that we don't make</p> <p>24 assumptions as to what she did in the bankruptcy</p> <p>25 court?</p> <p style="text-align: right;">Page 29</p>	<p>1 THE JUDGE: Well, I know what she did but</p> <p>2 I, I've got questions about--</p> <p>3 MR. KOPP: I have the statement on the</p> <p>4 bankruptcy court if Your Honor would like a copy.</p> <p>5 THE JUDGE: Well maybe I ought to inform</p> <p>6 the trustees that, that we've got this home, that</p> <p>7 she's filed for bankruptcy but there's equity in</p> <p>8 the home.</p> <p>9 MR. BRADY: That's correct. And the,</p> <p>10 and the creditors know that, Your Honor. That</p> <p>11 would not be anything new. The trustee knows that,</p> <p>12 the creditors know that.</p> <p>13 THE JUDGE: I don't know if they know</p> <p>14 that or not.</p> <p>15 MR. BRADY: Can I show you what it is?</p> <p>16 THE JUDGE: Well, what did she state in</p> <p>17 her thing?</p> <p>18 MR. BRADY: Schedule A, Real Property.</p> <p>19 One-half Interest, 2647 West 210 North, Provo,</p> <p>20 Utah. Debtor Interest, Cotenancy. Then down</p> <p>21 below it says, The wife has a one-half interest</p> <p>22 with former husband to real property in Utah. The</p> <p>23 former husband has right to occupy this premise</p> <p>24 until the youngest child is 18. There is no</p> <p>25 present value to this property.</p> <p style="text-align: right;">Page 30</p>

1 Now that's the disclosure. It tells all  
2 creditors and the trustee that she has one-half  
3 interest in property that will be sold in the  
4 future. And that's her interest in it. She  
5 doesn't own it but she has a right to one-half of  
6 the proceeds when it's sold.  
7 THE JUDGE: But she didn't tell them that  
8 she conveyed her interest. She didn't say she  
9 conveyed her interest. And further she, under  
10 your representation the home was going to be  
11 refinanced hopefully for \$108,000.  
12 MR. BRADY: 108.  
13 THE JUDGE: That doesn't seem to me like  
14 there is no, she has no value. What was the last  
15 sentence? She had--  
16 MR. BRADY: It says nil equity.  
17 THE JUDGE: Nil equity. She's got equity  
18 in it. If she didn't have any equity in it why is  
19 she finding it now?  
20 MR. BRADY: Your Honor, at the time the  
21 house was quit claimed over to the defendant there  
22 was a big argument over what the house was worth.  
23 When we go into bankruptcy court and we argue over  
24 value of the house you have to take into  
25 consideration improvement costs to the house, sale

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1 to be used then, placed into a trust account for  
2 the benefit of the children. Now--  
3 MR. KOPP: So it's the children's  
4 equity, not hers.  
5 THE JUDGE: No.  
6 MR. KOPP: It's that she's giving  
7 equity to the children and me.  
8 THE JUDGE: Well, not you.  
9 MR. KOPP: Yes. I get one-half of the  
10 house and the other half goes--  
11 THE JUDGE: Well your, yes, your half.  
12 MR. KOPP: The other half goes to the  
13 children. It's not hers.  
14 MR. BRADY: Your Honor, we would be happy  
15 to have the defendant file anything he wants to in  
16 that bankruptcy case, notify any of her creditors  
17 of her equity claim, do whatever this court feels  
18 is appropriate to make certain that there's no  
19 fraud on the court in, in New York.  
20 She believes she did that. She did not  
21 say I don't have an interest, I'm hiding this.  
22 She's saying I believe I have one-half interest in  
23 a house that some time in the future may have value  
24 but I don't think it has value now to go after.  
25 MR. KOPP: Your Honor, may I interrupt

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1 costs to the house and then calculate what the  
2 equity is and how that's divided. At the time  
3 that this was filed it was her belief that there  
4 was nil equity. Now that doesn't mean zero  
5 absolute. It means that it's not worth the cost  
6 of going after the balance of the equity. It's  
7 her belief that at some time in the future when the  
8 house is actually sold that there may be some  
9 equity. There may not be some equity.  
10 But what we're losing sight of here is  
11 that the defendant did receive money to make  
12 improvements in the home--  
13 THE JUDGE: Well I, I know that.  
14 MR. BRADY: -- and it's our impression  
15 that with those improvements there may be some  
16 equity in the future.  
17 THE JUDGE: But the thing is she wasn't  
18 honest in her petition. She had no interest in  
19 the home. She quit claimed that thing away.  
20 MR. BRADY: Your Honor, it was her belief  
21 that she had one-half interest because she had a  
22 stipulation with the defendant saying she did.  
23 The stipulation says that upon sale of the home she  
24 will receive one-half equity interest, she will  
25 receive one-half of the equity interest in the home

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1 for a moment? May I state that also that when I  
2 was told that she was going to bankruptcy she told  
3 me not to tell the lawyers. She told me not to  
4 tell Mr. Brady or my lawyer.  
5 MR. BRADY: Your Honor, I'm going to  
6 object if we're going to present testimony and  
7 evidence that not only I disagree with but we're  
8 not in the proper setting. We keep going far  
9 afield of the, of the relevant question. The  
10 defendant is--  
11 THE JUDGE: Well why does, why does she  
12 want-- See, the problem I have here is, is why  
13 does she have to throw her present child in in this  
14 thing if she, if she was so concerned about the  
15 children and she wasn't paying child support?  
16 MR. BRADY: Your Honor, what the  
17 defendant has failed to tell you is that she paid  
18 child support religiously every month until  
19 February.  
20 MR. KOPP: January.  
21 MR. BRADY: He received the benefit of  
22 child support until February.  
23 MR. KOPP: January.  
24 MR. BRADY: When he stopped receiving  
25 that benefit she was in the process of a delivery

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1 and a move and a wedding.  
 2 Now this defendant who is telling the  
 3 Court how difficult his life has been has failed to  
 4 indicate to the Court that he has been able to  
 5 claim those children for tax purposes by benefit of  
 6 the stipulation he now doesn't want to acknowledge  
 7 since that time. He has received all of his  
 8 retirement benefit. She has released all claim to  
 9 that retirement benefit. He doesn't tell the  
 10 Court that either.  
 11 The other thing is that my client knows  
 12 that he's receiving funds in excess of the first  
 13 and second mortgage. He does not own the funds in  
 14 excess of the first and second mortgage under the  
 15 decree. My client under the decree is entitled to  
 16 half equity in the marital interest in that home.  
 17 She was willing to give him all of that,--  
 18 THE JUDGE: Well--  
 19 MR. BRADY: -- her share as well in order  
 20 to catch up her child support.  
 21 MR. KOPP: Your Honor,--  
 22 THE JUDGE: Well, you have no written  
 23 agreement to--  
 24 MR. KOPP: Yes. In the, in the  
 25 original divorce decree--

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1 quit claim deed. They go back to the same  
 2 position that they had.  
 3 MR. BRADY: Does that include that he  
 4 refunds to her--  
 5 THE JUDGE: Well we--  
 6 MR. BRADY: -- one-half of the excess  
 7 proceeds?  
 8 THE JUDGE: Well, we can take care of  
 9 that. That's a financial question.  
 10 MR. BRADY: That's correct.  
 11 THE JUDGE: We can take care of that  
 12 whether there will be offsets, whether she's going  
 13 to have a reduction in her child support or if not  
 14 and if she owes child support that can be  
 15 credited.  
 16 But what's going to happen here is this:  
 17 That the home is going to come back out. It's not  
 18 going to go to one party. There's, there's no  
 19 agreement to that effect. She had, in essence she  
 20 had no right to quit claim that thing without.  
 21 unless the parties agreed, which we know there's no  
 22 written agreement. I'm going to set that aside.  
 23 MR. BRADY: So you're requiring that  
 24 there be a written agreement before the Court will  
 25 recognize that there was an agreement that was

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1 THE JUDGE: Yes.  
 2 MR. KOPP: -- if she didn't pay child  
 3 support I had the right to have the tax  
 4 deductions. This stipulation doesn't do  
 5 anything. In the original divorce decree if she  
 6 didn't pay her child support then I got to claim  
 7 the children as tax deductions.  
 8 THE JUDGE: Okay. This is the situation  
 9 I have that's going to affect both of you.  
 10 Neither of you have a written stipulation. So  
 11 what I've got to do is set aside the quit claim  
 12 deed. I'm going to set aside the quit claim  
 13 deed. You have no agreement, no written  
 14 agreement. And how that's going to affect the  
 15 financing. And then I want that information  
 16 passed on to the trustees of the bankruptcy.  
 17 The problem we have here is, okay, you  
 18 have no agreement, neither party wants to come to  
 19 an agreement, to put the parties back in the proper  
 20 perspective because there is no agreement. You  
 21 can't be messing around with, with-- The decree  
 22 has not been modified yet. You have no  
 23 agreement.  
 24 So what I've got to do is I can issue an  
 25 order, I'm going to issue an order to set aside the

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1 acted upon?  
 2 THE JUDGE: No. A written agreement as  
 3 to the deed. That's the, that's the, that's the  
 4 whole problem here.  
 5 I don't know if anyone is intentionally  
 6 trying to avoid the bankruptcy court and its  
 7 creditors but it seems clearly to me that there's  
 8 some misunderstanding that she thought she had a  
 9 stipulation where she still had a one-half interest  
 10 and that's how she declared it.  
 11 But it seems-- I don't know what the deal  
 12 here is. But first of all, that deed should not  
 13 have been quit claimed to him and we've got to set  
 14 that aside, we've got to set that aside, get back  
 15 to the original position.  
 16 MR. KOPP: The original position on the  
 17 divorce is that half the house is hers and half is  
 18 mine.  
 19 THE JUDGE: Right.  
 20 MR. KOPP: Okay. All right. That's,  
 21 that's the original statement is that half is hers  
 22 and half is mine.  
 23 THE JUDGE: And then we're going to find  
 24 out whether she has, she has a change of  
 25 circumstance for the child support. And then if,

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1 and if he's benefitted at all because of the access  
 2 then we'll give her credit for it.  
 3 See, right now the whole issue is you're  
 4 saying because she quit claimed the thing. I'm  
 5 going to say no, there's just too many things that  
 6 I've, I've got too many red flags here.  
 7 MR. BRADY: I should point out, Your  
 8 Honor, that she didn't initiate the request for a  
 9 quit claim deed, it was not her action that caused  
 10 it to be drafted.  
 11 THE JUDGE: Well I-- Let me, let be  
 12 frank with both of you because you're representing  
 13 yourself and I think Mr. Brady knows what's going  
 14 to happen here is unless you both come to an  
 15 agreement and if this goes to trial come whatever,  
 16 July something, what's going to happen here is  
 17 this: I don't want any finger pointing if the  
 18 house is lost. The creditors are going to come  
 19 in.  
 20 MR. BRADY: Uh-huh (affirmative).  
 21 THE JUDGE: If she's judgment proof, you  
 22 know, if she's judgment proof as she says she is  
 23 then they're going to come in on whatever they  
 24 can. That's, that may be part of the marital  
 25 debts. Now, it may be zero. I don't know what

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1 that it appears that way.  
 2 THE JUDGE: Well, I'm saying I'm going to  
 3 set the thing aside.  
 4 MR. BRADY: I need to point out--  
 5 THE JUDGE: And then we're going to find  
 6 out what the equity in the home is and then we're  
 7 going to establish that. Because I need to get,  
 8 establish the child support issue. That's-- And  
 9 the thing is, you know, I don't know who's, whether  
 10 there will be credit for the visitation or not.  
 11 It seems to me you have no written agreement and  
 12 I'm going to set aside that, that, the quit claim  
 13 deed because, and then if she has money coming to  
 14 her then she may have a judgment against him.  
 15 We'll establish the equity. And, you know, I don't  
 16 know now because you don't have an agreement.  
 17 He's going to be hurting too. Can you  
 18 imagine the people that financed this thing?  
 19 MR. BRADY: Uh-huh (affirmative). I've  
 20 represented those kinds of people.  
 21 THE JUDGE: And they're going to come  
 22 after you now, Mr. Kopp, because they're going to  
 23 say you perpetrated fraud upon them. And so you,  
 24 you may lose your equity in the home too.  
 25 But that's to me what I've got to do is

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1 debts she carried over.  
 2 MR. BRADY: That's my concern with this  
 3 hearing, Your Honor. The defendant has been given  
 4 latitude to convince the Court that my client was  
 5 the cause of the bankruptcy. She's not. It's not  
 6 her debts, it's not her creditors. It's her  
 7 current husband who has no claim on the property.  
 8 Nevertheless, I didn't intend to come here  
 9 to argue all of the various issues and present all  
 10 of the evidence. I wanted the Court to look  
 11 specifically at the findings, at the rulings, at  
 12 the representations, at the motivations, at the  
 13 benefits and decide whether or not it was an  
 14 enforceable agreement. You have now been persuaded  
 15 by him that she has some humongous obligation in  
 16 bankruptcy court or that she's just bankrupted out  
 17 of a bunch-- She didn't, she doesn't.  
 18 THE JUDGE: Well--  
 19 MR. BRADY: You've been persuaded that  
 20 he's had a hard life--  
 21 THE JUDGE: Well, I didn't say--  
 22 MR. BRADY: -- and the truth is he's  
 23 received a lot of benefits.  
 24 THE JUDGE: I didn't say that.  
 25 MR. BRADY: I know. I'm just indicating

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1 I'm not taking sides here. I'm saying I'm going to  
 2 hear this. If you really want to go to trial I may  
 3 as well clean this thing up because there's a lot  
 4 of things that should be cleaned up. And if, if  
 5 there's anything to benefit the children I'll, I'll  
 6 take a look at that. But it seems to me I've got  
 7 to clean this mess up.  
 8 First of all, the home was never financed  
 9 for \$108,000 anyway, it was for \$98,000. To me I  
 10 hate to see if Mrs. Kopp has any equity in that  
 11 thing that she not only losses that or not even get  
 12 credit for that. If she's going to get credit I  
 13 want to make it known now how much she's going to  
 14 get credit for.  
 15 MR. BRADY: That's fine.  
 16 THE JUDGE: And that's the only way we,  
 17 we've got to do this. But having said all that it  
 18 seems to me Mr. Kopp has made an offer that he  
 19 doesn't mind the children getting--  
 20 MR. KOPP: Half of the house equity.  
 21 THE JUDGE: -- half of the house equity  
 22 which she agrees to anyway.  
 23 MR. KOPP: Our biological children.  
 24 THE JUDGE: His only concern is he  
 25 doesn't want the child not of this to get any.

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1 MR. BRADY: If that were his only concern  
2 I could sit down and talk with him, Your Honor.  
3 THE JUDGE: Is it-- He made an offer, he  
4 made an--  
5 MR. BRADY: Now he wants many thousands  
6 and thousands of dollars.  
7 THE JUDGE: Well he made, he made an  
8 offer.  
9 MR. BRADY: Is that his offer? I'd like  
10 to hear it.  
11 THE JUDGE: That's, that's the offer you  
12 made, didn't you?  
13 MR. KOPP: You take off the child  
14 support for the child and--  
15 MR. BRADY: See he wants-- You're  
16 talking about the one child out of the trust or are  
17 you talking you want all of the history of child  
18 support now?  
19 MR. KOPP: No, no, no. Her child goes  
20 off the stipulation.  
21 MR. BRADY: Huh-uh (negative).  
22 MR. KOPP: Her child doesn't get any  
23 money.  
24 THE JUDGE: Any interest.  
25 MR. KOPP: Any interest, anything at

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1 THE JUDGE: Well this, that's what, this  
2 is what I understand here, Mr. Brady, is if your  
3 client is willing to take the child from the second  
4 relationship off--  
5 MR. BRADY: Uh-huh (affirmative).  
6 THE JUDGE: -- and that-- Or is your  
7 client saying she doesn't want to pay any child  
8 support?  
9 MR. BRADY: No, Your Honor.  
10 THE JUDGE: Well then--  
11 MR. BRADY: And that's, that's the  
12 problem with this hearing. This man has received  
13 seven or \$8,000 in equity out of the home that he  
14 is not letting the Court know what he did with and  
15 truth is--  
16 MR. KOPP: Your Honor, I did. I showed  
17 you.  
18 MR. BRADY: Hang on. The agreement was  
19 that he would--  
20 THE JUDGE: Well, now wait a minute.  
21 Mr. Brady. He did, he--  
22 MR. KOPP: I did show him, Your Honor.  
23 (Short inaudible, two speakers).  
24 THE JUDGE: Just a minute. Let me talk.  
25 Both of you are flying off the handle without

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1 all. Her child is off of it.  
2 MR. BRADY: Okay.  
3 MR. KOPP: Then what needs to be  
4 settled is okay, there's child support owing that  
5 she owes me. As of the statement back in September  
6 it was \$7,000 some odd hundred dollars, \$7,000 some  
7 odd dollars as of then. Now it's continued on and  
8 whatever your judgment is, Your Honor, what her  
9 child support should be--  
10 MR. BRADY: See Your Honor, the  
11 agreement--  
12 THE JUDGE: Well, let him finish.  
13 MR. BRADY: Okay.  
14 MR. KOPP: Yes. Thank you.  
15 So whatever you decide to say, if she  
16 owes, you know, for from September of '96 when they  
17 first put this condition to change her child  
18 support, if you say it's \$200 a month that she  
19 should pay from then on then that should be taken  
20 into, taken off of money that is, is her equity on  
21 her half.  
22 Somehow it's all coming to my children.  
23 it's coming to me and our children, our four  
24 children. She's not getting anything. She  
25 doesn't need to get any money.

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1 going, and you're going to be in a worse situation  
2 to try to resolve this.  
3 The problem here is this: What is your  
4 client saying in this modification? She doesn't  
5 want to pay a penny for child support? What is  
6 she saying?  
7 MR. BRADY: Your Honor, if we go back to  
8 the initial question of child support she wanted  
9 this Court to consider her current income, the  
10 number of family members and children she supports  
11 and apply the table, period. That's, that's,  
12 assuming that nothing happened after the filing of  
13 the petition that was our position.  
14 THE JUDGE: Well how much, how much was  
15 that going to be a reduction then?  
16 MR. BRADY: It would depend on whether  
17 Your Honor imputed income and if so at how much.  
18 We could not reach an agreement on that.  
19 The agreement that we thought we reached  
20 was that he would take the equity out of the home  
21 for the arrearages, that would then be her child  
22 support to pay him out of the equity of the home  
23 and that would cover the arrearages. Because she  
24 has zero income and because he's getting, in our  
25 opinion, significant equity in the home he had also

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1 agreed that he would not seek further child  
2 support. We've got children who are in mid-teens  
3 almost out of the child support ranges now. Only  
4 one year, two years?

5 MR. KOPP: One year for Aaron and two  
6 years for Megan.

7 MR. BRADY: And at that time child  
8 support terminates. Our, our understanding was  
9 that he would apply the refinance money towards the  
10 arrearages, he would apply the other money for  
11 other purposes and then he would not charge her  
12 child support into the future given her income,  
13 given his income, given his equity in the home.

14 THE JUDGE: Okay. Well, maybe I'll try  
15 to resolve this. But my understanding of your  
16 offer was, and of course it was just a statement  
17 you made, is that you are willing to leave her  
18 alone and not worry about anything else as long as  
19 she took that child off of that.

20 MR. KOPP: My offer, my offer is and  
21 what I told Ms. Buhler and Mr. Brady is--

22 THE JUDGE: No. What you said to me  
23 this, this afternoon.

24 MR. KOPP: What I said here is that, is  
25 that I'll drop all child support, past owing,

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1 THE JUDGE: The house, the house will--  
2 Let's, let's do it this way:

3 MR. KOPP: I mean, are we going to  
4 figure out how she's going to pay her back child  
5 support of \$7,000 (short inaudible, two speakers).

6 THE JUDGE: Okay. He doesn't-- They  
7 don't want to pay anything.

8 MR. BRADY: Can I, can I respond?

9 THE JUDGE: No. What he's saying is you  
10 take it all out of the house. You can have the  
11 house.

12 MR. KOPP: Okay.

13 THE JUDGE: She won't even claim any  
14 equity in the house.

15 MR. KOPP: Okay.

16 THE JUDGE: And he's going to talk to  
17 his client to say look, take, we'll, we'll state it  
18 that your pre--, you child from this other  
19 relationship does not have any interest in it.  
20 That way there's-- Because you're going to get the  
21 house, all the equity, there's no more ongoing  
22 child support, there's, and all of the arrearages  
23 are going to be taken care of in the equity. And  
24 you folks just go your separate ways except  
25 whatever visitation that needs to occur.

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1 future owing, medical and dental bills, phone  
2 bills, whatever. Sign the house over to me. She  
3 can go on her merry way, I'll go on my merry way.  
4 My children and I will use the house. If we  
5 refinance it, if we sell it it will go to my  
6 children.

7 The money that was \$7,000 which I showed  
8 the Court and all this money that was extra has  
9 gone to my children. Not a penny has gone to me.

10 THE JUDGE: Okay. So, so what we have  
11 is--

12 MR. KOPP: I'm taking care of my  
13 children.

14 THE JUDGE: He is willing to walk away  
15 as long as your client doesn't continue to request  
16 that her present child gets any kind of equitable  
17 interest in whatever there is there.

18 MR. BRADY: If your understanding of the  
19 agreement is that and if that's his offer I'll take  
20 it back to my client.

21 THE JUDGE: And that's, that's your  
22 offer. Correct?

23 MR. KOPP: That, that we're-- Now  
24 that-- How is the house going to be taken care  
25 of? That means that the house--

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1 So to me the only hang-up is whether your  
2 client still insists that her present child share  
3 proportionately in whatever equity she may have.

4 MR. BRADY: Your Honor, I could address  
5 that question with my client and I'll be glad to.

6 I need to clarify for the Court. We  
7 believe the house will have equity in two years  
8 when the house is sold. My client won't have  
9 proceeds at all from the equity in the home if she  
10 deeds it over to him. She will be receiving the  
11 benefit of not having paid child support since  
12 1996, we understand that trade-off.

13 We believe that the trade-off between the  
14 equity in the home at the time of the divorce and  
15 the equity in the home at the time of the sale is  
16 in excess of what she would be obligated to pay in  
17 child support. That's why in our negotiations the  
18 amount of \$108,000 was reached that he would have  
19 equity up to 108 and she would share equity above  
20 \$108,000 because we thought that was the break-even  
21 point.

22 If his concern is the one child I'll talk  
23 to her about that, I'll use my best persuasive  
24 efforts.

25 My concern is that we're involved too much

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1 in a negotiation process without all of the  
2 information of what is in the stipulation and what  
3 the sides are presenting and as a result I'm not  
4 getting a clear understanding of what his offer  
5 is. I'm understanding what Your Honor is saying  
6 but there are other issues that have been discussed  
7 including retirement benefits.  
8 I'd be glad to talk to him about it. My  
9 problem is he wants the child-- In other words, he  
10 wants to direct how my child (sic) spends, how my  
11 client spends her half equity and he wants to  
12 collect child support. And we'd prefer to stand by  
13 the decree under those circumstances because by the  
14 decree she gets half equity and she pays child  
15 support.  
16 MR. KOPP: Oh, no.  
17 THE JUDGE: He doesn't want any child  
18 support.  
19 MR. KOPP: No.  
20 MR. BRADY: All he wants is full equity  
21 in the house in exchange for child support--  
22 MR. KOPP: Your Honor, and the  
23 \$108,000--  
24 THE JUDGE: -- and arrearages.  
25 MR. KOPP: Your Honor, the \$108,000 I

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1 from the equity of the home.  
2 MR. BRADY: The only difference between  
3 this conversation and the numerous conversations I  
4 had with Mr. Orr is that Mr. Orr capped it at  
5 \$108,000 for his equity and they split everything  
6 above it. If we can go to that arrangement which  
7 is the arrangement we thought we had, I can go back  
8 to my client and ask her to take one off. But if  
9 we're going to say that everything above \$108,000  
10 is all his, my client takes nothing in addition,  
11 then it is not necessarily financially to my  
12 client's benefit.  
13 THE JUDGE: Well then we'll just have a  
14 hearing because I'm not--  
15 MR. KOPP: Because I don't understand  
16 any of that \$108,000.  
17 THE JUDGE: I'm not going to force the  
18 stipulation. I'm not going to force the  
19 stipulation. And if, you know, that's what we  
20 have the hearing for. We're going to have a  
21 hearing. And it seems to me now that, you know,  
22 you, if you don't, if you don't have a stipulation,  
23 because I'm not going to force it.  
24 I'm going to issue an order today though  
25 that within so many days you either come to an

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1 don't know where Mr. Brady thinks we discussed  
2 it. That was a, when I went to the realtor to get  
3 the loan they're the ones that told me I could  
4 finance for 108. He had, he had nothing to do  
5 with that. I don't know where he's getting that  
6 information.  
7 THE JUDGE: Well let me make it clear, I  
8 guess, you know--  
9 MR. KOPP: I just say give me the  
10 house, forget the--  
11 THE JUDGE: I don't know, I don't know  
12 which way if you had this (short inaudible, voice  
13 dropped). As I understand what it is now is  
14 this. Take the child off and he walks away and  
15 you walk, your client walks away.  
16 MR. BRADY: If that were to her benefit  
17 we would, Your Honor.  
18 THE JUDGE: And so if-- I, I know.  
19 MR. BRADY: Under the decree we think it  
20 is not.  
21 THE JUDGE: I'm not saying for you to  
22 agree. I'm saying that's my understanding that--  
23 MR. BRADY: Yes.  
24 THE JUDGE: -- that he's not expecting  
25 ongoing child support. It's just going to come out

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1 agreement, if not there will be an order that says  
2 that the home will be, the deed will be set aside.  
3 MR. BRADY: Okay.  
4 THE JUDGE: And it seems to me at that  
5 juncture then both parties are really taking their  
6 chances because it may be that they may, whatever  
7 equity may be in the home is going to be evened out  
8 by creditors and--  
9 MR. KOPP: Her creditors.  
10 THE JUDGE: Well, the creditors. I mean  
11 she's, if she's got an interest in that home  
12 they're going to come and attach the home and put a  
13 lien on it.  
14 MR. KOPP: Okay. So--  
15 THE JUDGE: Your home, your--  
16 MR. KOPP: I just ask Mr. Brady again  
17 the \$108,000 hasn't got anything to do with it.  
18 THE JUDGE: Well, just a minute.  
19 MR. KOPP: Okay.  
20 THE JUDGE: Then that's, that's what's  
21 going to happen because they're going to be put in  
22 the same position and obviously both, both of you  
23 may lose whatever equity may be in the home.  
24 Number two, because the equity now is, is  
25 being debated and argued that no, there's not

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1 \$108,000 or more or whatever, you've got to get the  
 2 home appraised.  
 3 MR. KOPP: Well, the \$108,000 was just  
 4 to refinance the house.  
 5 THE JUDGE: Well, to refinance the  
 6 house. But when you refinance the house, any time  
 7 you refinance a home you've got to get it  
 8 appraised. Correct?  
 9 MR. KOPP: Yes. I have the appraisal  
 10 of what it appraised for last year.  
 11 THE JUDGE: What was it appraised for?  
 12 MR. KOPP: It was \$147,000, \$148,000.  
 13 THE JUDGE: Okay. That's the  
 14 appraisal. Then that, and what-- And so if it's  
 15 \$98,000 that's owing now and it was appraised at  
 16 147, it seems to me then there's about \$50,000 in  
 17 equity there.  
 18 MR. BRADY: Uh-huh (affirmative).  
 19 THE JUDGE: Divided in half is \$25,000  
 20 apiece.  
 21 MR. KOPP: Then we need to find out  
 22 child support and medical bills--  
 23 THE JUDGE: Well, it seems to me, even if  
 24 at the most, even at the most beneficial ruling  
 25 towards you is not going to come out to \$25,000 in

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1 refinancing. That's the, what I'm going to use  
 2 with, with an opportunity so that we don't have to  
 3 bring any appraisers in. It costs more money.  
 4 MR. KOPP: Okay.  
 5 THE JUDGE: Then the only issue here  
 6 then is going to be what change of circumstance  
 7 Mr. Brady's client has, if any. You know, whether  
 8 she voluntarily is underemployed or if she's got  
 9 grounds for a modification. If I feel that she  
 10 voluntarily is underemployed then there would be no  
 11 change of circumstance. Or I may make, I may see  
 12 what the situation is and find out. And then, and  
 13 if that's the case, if she's underemployed then we  
 14 go by the, the historical earnings what she was  
 15 making, there would be no changes in the child  
 16 support. But the thing is the Court has to cash  
 17 out the equity and, you know, that's the way it  
 18 is. And to me that's why the trial should be very  
 19 simple.  
 20 MR. BRADY: I don't disagree with you.  
 21 Your Honor. May I make a couple of  
 22 observations?  
 23 THE JUDGE: Okay.  
 24 MR. BRADY: At this time the only issues  
 25 before the Court are child support and

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1 any sense of the word for any arrearages at the--  
 2 And now what's contested is \$7,000, maybe \$8,000  
 3 and that's contested.  
 4 MR. KOPP: That's correct.  
 5 THE JUDGE: I'm not saying that, that's  
 6 in the arrearage. And then the ongoing.  
 7 So it seems to me now unless Mr. Brady is  
 8 going to get, wants his own appraisal, I mean we  
 9 have at least an appraisal, recent appraisal for  
 10 \$147,000,--  
 11 MR. KOPP: Uh-huh (affirmative).  
 12 THE JUDGE: -- the amount for the  
 13 refinancing. Which means that the equity is at  
 14 \$50,000 something, divided both ways it's-- Let's  
 15 suppose that is the equity. You go-- If I'm going  
 16 to divide the equity now that's \$25,000 apiece and  
 17 then I have to entertain now whether the, what, if  
 18 there is any arrearages, if yes what the amount of  
 19 arrearages is.  
 20 MR. BRADY: Correct.  
 21 THE JUDGE: And what the amount of  
 22 ongoing child support is. And so that to me is  
 23 the issue at trial. It shouldn't be-- It's not  
 24 that complicated. You bring in your loan  
 25 documents and that, that appraisal for the

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1 visitation. The other issues have been brought in  
 2 by way of our motion because we thought we had an  
 3 agreement.  
 4 THE JUDGE: Well I'm--  
 5 MR. BRADY: Are you telling me now--  
 6 THE JUDGE: I'm bringing, I'm bringing  
 7 those in.  
 8 MR. BRADY: -- that we need to prepare  
 9 for a new modification to the decree--  
 10 THE JUDGE: Well no, no.  
 11 MR. BRADY: -- regarding equity in the  
 12 house?  
 13 THE JUDGE: No. I'm bringing in the  
 14 equity issue because--  
 15 MR. BRADY: In the decree that's dealt  
 16 with.  
 17 THE JUDGE: Well, if it's dealt with in  
 18 the decree then it's-- What does the decree say?  
 19 MR. BRADY: It says at the time the  
 20 youngest reaches 18 the house is sold and they  
 21 split the equity after certain expenses are paid.  
 22 THE JUDGE: Okay.  
 23 MR. KOPP: And half goes to my children  
 24 and her child from that other guy.  
 25 THE JUDGE: No, no, no.

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1 MR. KOPP: Yes, it is.  
 2 THE JUDGE: No, no, no. That's the, the  
 3 proposed stipulation.  
 4 MR. BRADY: We're talking about the  
 5 decree.  
 6 MR. KOPP: Oh, the decree.  
 7 MR. BRADY: The divorce decree.  
 8 MR. KOPP: Okay.  
 9 THE JUDGE: The decree says-- Well, we  
 10 don't need to get into that thing then.  
 11 MR. KOPP: Thank you, Mr. Brady, for  
 12 making that statement.  
 13 THE JUDGE: And then I'll just, all I'm  
 14 doing is setting aside the, the quit claim deed.  
 15 MR. BRADY: That's right. If the quit  
 16 claim deed is set aside--  
 17 THE JUDGE: So, so when the home is  
 18 sold--  
 19 MR. BRADY: -- then we go back to the  
 20 decree.  
 21 THE JUDGE: When the home is sold, when  
 22 the home is sold then-- Well this makes it much  
 23 easier then. Your divorce decree states that you  
 24 split the equity--  
 25 MR. BRADY: Right.

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1 on the child support then is, is whether there be a  
 2 modification.  
 3 MR. BRADY: Uh-huh (affirmative).  
 4 THE JUDGE: And if not what the amount of  
 5 arrearages is.  
 6 MR. BRADY: The only, the only additional  
 7 issue that I see out there, and I don't know, if  
 8 I'm wrong you can tell me, but where he has  
 9 refinanced the house and has increased the loans  
 10 against the house from what they were prior to the  
 11 quit claim deed we need to at some time either in  
 12 this order where you set aside the quit claim deed  
 13 or at another indicate what is the--  
 14 THE JUDGE: Okay. Well to me, to me  
 15 that's very simple too. This is what's going to  
 16 happen.  
 17 MR. BRADY: Okay.  
 18 THE JUDGE: If, if I don't modify the  
 19 decree or let's suppose I say X amount for  
 20 arrearages.  
 21 MR. BRADY: Uh-huh (affirmative).  
 22 THE JUDGE: That amount will be the  
 23 difference between what before he got, well what  
 24 benefit he got with the refinancing and if it went,  
 25 and he says all of the money went to the children.

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1 THE JUDGE: -- when the home is sold.  
 2 Okay? So this is the situation. We'll set aside  
 3 the quit claim deed so that when the home is sold  
 4 the, the agent will have to get her signature and  
 5 your signature.  
 6 So then the only issue here before the  
 7 Court is this: Should the child support be  
 8 modified. Now I don't know about the visitation,  
 9 what's, what's at issue on the visitation but it  
 10 seems to me it's pretty much--  
 11 MR. BRADY: That's rather straight  
 12 forward and not much to argue about. We just have  
 13 questions for Your Honor where she's moved  
 14 out-of-state what is a reasonable right of  
 15 visitation where she has.  
 16 THE JUDGE: Okay.  
 17 MR. BRADY: That's all.  
 18 MR. KOPP: And Your Honor, I've stated  
 19 if they can get them, if they can pay for them to  
 20 go out there, be my guest. They can go out  
 21 tomorrow. They can go out any time. They're--  
 22 And as far as calling I've been more than gracious  
 23 on paying the phone bills and stuff.  
 24 THE JUDGE: Well that, well that to me  
 25 that's, that's-- And then the only thing then is

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1 And if I, if for example hypothetically your, your  
 2 client, I says okay, she has an offset of \$5,000.  
 3 Okay? Or no, she had, she owes, she owes \$5,000 in  
 4 arrearages then that, then, then the difference  
 5 would be out of the \$7,000 difference she has will  
 6 be \$2,000. She gets an offset there--  
 7 MR. BRADY: Okay.  
 8 THE JUDGE: -- that he won't be  
 9 responsible for to owe, to owe her anything. And  
 10 then on ongoing child support I could say up to the  
 11 time we diminish the \$2,000 there she doesn't have  
 12 to pay anything.  
 13 MR. BRADY: Do you want us--  
 14 THE JUDGE: Because he already refinanced  
 15 the house.  
 16 MR. BRADY: Do you want us then to  
 17 present evidence regarding the refinance, the  
 18 existing payoffs and the new equity at the time of  
 19 our hearing?  
 20 THE JUDGE: Yes. But I think that's  
 21 all-- I don't know. You know, you can just get the  
 22 documents from the, the--  
 23 MR. BRADY: Right.  
 24 MR. KOPP: I'll have documents from  
 25 the--

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1 THE JUDGE: You have the documents. To  
2 me, you know, I don't know how much was owing on  
3 the two mortgages. Okay? And then that was paid  
4 off.  
5 MR. BRADY: Right.  
6 THE JUDGE: Now let's suppose \$100 was  
7 owing on the mortgage, first and second, but the  
8 loan, the refinance loan was \$200. Then I'm going  
9 to look at the \$100 extra, you know, in the  
10 refinancing and then I'm going to make any offsets  
11 with that.  
12 MR. BRADY: That's what I understand.  
13 THE JUDGE: And maybe, and if I, if I say  
14 your client owes \$50 in judgment, then there's an  
15 offset of that \$50. And then but he still will be  
16 benefitting another 50. So I'm going to say then  
17 okay, whatever the amount of child support is we're  
18 going to deduct from that 50 until that, there's no  
19 longer a zero balance and that she start paying  
20 hence forth.  
21 MR. BRADY: Okay.  
22 THE JUDGE: To me that's very simple. I  
23 still, I still believe you can, you know, you can  
24 work it out. It seems to me there's some  
25 misunderstanding here but maybe you can't. But

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1 trial now, July when?  
2 MR. KOPP: 2nd.  
3 THE JUDGE: July 2nd.  
4 MR. KOPP: 10:00 A.M.  
5 THE JUDGE: Okay. Then you know I, you  
6 know, today is the 21st. I could make it in five  
7 days, a week from now, the 29th--  
8 MR. BRADY: Okay.  
9 THE JUDGE: -- that you prepare the  
10 necessary documents. If you-- The only reason  
11 why is I could make it effective today.  
12 MR. BRADY: Uh-huh (affirmative).  
13 THE JUDGE: But it seems to me that I  
14 don't think both of you are far off. You may be  
15 but I don't think you are. Because it comes down  
16 to this now because both sides have a lot to lose  
17 in this case if I set it aside. I really do.  
18 But, but I think even if we had the trial it could  
19 be very simply taken care of.  
20 The only issue here as I see it is whether  
21 there's a difference in the equity in the home and  
22 there's a difference, there's a difference as to  
23 whether she wants her present child to have any  
24 equity, any interest in her equity.  
25 MR. BRADY: That's correct.

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1 that's why at the day of the trial you bring all  
2 the documents to show on the closing how much was  
3 paid off for the mortgages. Okay? That's all I'm  
4 going to look at. Don't, I'm not going to look at  
5 the, the payoff on the taxes or that--  
6 MR. BRADY: I understand that.  
7 THE JUDGE: -- that came out of that.  
8 MR. KOPP: I can give you that document  
9 now, a copy of the document.  
10 THE JUDGE: Well, I don't need it. You  
11 give it to Mr. Brady for his perusal.  
12 And then so that that's settled. And  
13 then, you know, we can take care of the, the  
14 ongoing child support issue because the ongoing  
15 child support before the Court is whether that  
16 should be modified or not. And if it's not then  
17 the amount of arrearages will be determined that,  
18 you know, back to the time she stopped paying child  
19 support.  
20 MR. BRADY: How should I prepare the  
21 order then with regard to setting aside the quit  
22 claim deed? Do you want me to set, make the order  
23 that it's effective immediately or five days after  
24 signing or how do you want me to do that?  
25 THE JUDGE: I will, you know, when's the

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1 THE JUDGE: which she already conveyed to  
2 her children anyway. That's part of the  
3 stipulation though. Right?  
4 MR. BRADY: Okay.  
5 THE JUDGE: So that's not in force. So  
6 that the original decree says they just walk away  
7 with one-half of the equity.  
8 MR. BRADY: Okay.  
9 THE JUDGE: And to me my feeling is this,  
10 since you're representing yourself is as, as you  
11 negotiate outside the Court's presence it may be  
12 wise to resolve this once and for all too and both  
13 parties make little concessions rather than  
14 waiting. What does the decree say, until the  
15 child reaches 18?  
16 MR. BRADY: Youngest reaches 18 which is  
17 in two years.  
18 THE JUDGE: When will that happen?  
19 MR. KOPP: Two years and six months.  
20 THE JUDGE: Two years and six months  
21 from now. You know, rather than wait now you  
22 could, you could resolve everything. But it may  
23 be that you have to come back in two years and six  
24 months if you can't agree on, on anything.  
25 The positive and the negative is the

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1 equity may go up--  
 2 MR. KOPP: And it may go down.  
 3 THE JUDGE: -- or it may go down. But  
 4 the trend, the trend seems to be that it's going up  
 5 and it's not going to go down. But you see the  
 6 real equity-- That's, that's paper equity, the  
 7 value of the home. The real equity is what the  
 8 home can be sold for.  
 9 MR. BRADY: That's right.  
 10 MR. KOPP: Yes.  
 11 THE JUDGE: And it seems to me, doesn't  
 12 the decree says when the child reaches 18 it's  
 13 supposed to be listed? You, you, either somebody  
 14 pays somebody off or the home is to be sold  
 15 obviously.  
 16 MR. KOPP: Then hopefully, Your Honor,  
 17 before she turns 18 they won't put that airport  
 18 in. Because when they put that airport in that  
 19 equity in that whole area is going to go out the  
 20 bottom door.  
 21 THE JUDGE: Well I don't know. It may,  
 22 may not.  
 23 MR. KOPP: Because they'll put that hub  
 24 in there and it's already noisy enough with the  
 25 Novell jet going off.

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1 MR. KOPP: It has, the equity that I  
 2 got out of the, the refinancing--  
 3 THE JUDGE: No, let's not talk about the  
 4 refinancing.  
 5 MR. BRADY: We're referring to all future  
 6 equity--  
 7 MR. KOPP: Oh, okay.  
 8 MR. KOPP: -- that you get out of the  
 9 house.  
 10 MR. KOPP: Okay.  
 11 THE JUDGE: I think, I think he indicated  
 12 that he wouldn't care about any medical or dental.  
 13 MR. BRADY: Uh-huh (affirmative).  
 14 THE JUDGE: But I don't think he said  
 15 anything about transportation costs.  
 16 MR. BRADY: That's what I need to find  
 17 out.  
 18 MR. KOPP: Transportation should not, I  
 19 don't think I should pay for transportation. I--  
 20 THE JUDGE: But you're willing to waive  
 21 any participation in any medical and dental.  
 22 MR. KOPP: Right. I won't, I won't  
 23 have any medical and dental. I, I think the Court,  
 24 and I think we ought to look at the phone charges  
 25 though because they are substantial. I think that

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1 MR. BRADY: Your Honor, just so that I'm  
 2 clear and with your help I appreciate, I want to  
 3 make sure that I restate the offer so that when I  
 4 talk to my client I don't have a question of what  
 5 the offer is.  
 6 THE JUDGE: Okay. Go ahead.  
 7 MR. BRADY: My understanding is that if  
 8 she does not include her child by her current  
 9 husband and she agrees that he retains all equity  
 10 in the home that she would not have a child support  
 11 or arrearage obligation, she would not have a child  
 12 support future obligation.  
 13 THE JUDGE: Right.  
 14 MR. BRADY: That the equity in the home  
 15 would apply for all child support obligations.  
 16 Now under our stipulation, which I  
 17 understand is not enforced at this time, it was my  
 18 understanding that those funds would also be used  
 19 to pay for medical, dental co-pays and so on.  
 20 There was also a provision, whether it's still in  
 21 effect or not I need to find out, that it would be  
 22 used to pay for child transportation for visits and  
 23 telephone calls. I need to have that clarified so  
 24 that when I talk to her I don't give her the wrong  
 25 information.

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1 the plaintiff needs to be responsible to call her  
 2 children and to pay, and for her children to call  
 3 her. I mean--  
 4 THE JUDGE: Well I think that what you  
 5 said is correct except for transportation costs and  
 6 phone charges.  
 7 MR. BRADY: So my understanding is that  
 8 you're not willing to pay any of the transportation  
 9 or any of the telephone charges out of the equity  
 10 of the home.  
 11 THE JUDGE: You may want to split the  
 12 transportation costs.  
 13 MR. KOPP: I already have paid out of  
 14 the equity of the home on transportation and the  
 15 phone bills. I have been. That's where some of  
 16 that money went, that \$7,000 over.  
 17 MR. BRADY: My, my question is from here  
 18 over the next two years.  
 19 THE JUDGE: For the future.  
 20 MR. KOPP: Okay. I'll pay phone bills.  
 21 MR. BRADY: What if we limited the phone  
 22 bills so that you don't pay more than--  
 23 MR. KOPP: Well, right now what I've  
 24 done, and I should have done it a long time ago is  
 25 I go down to Sams Club for \$18 and buy a 120 minute

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1 phone card.  
 2 MR. BRADY: Is that for all the children  
 3 or for one child?  
 4 MR. KOPP: Well, it's only Megan and  
 5 Aaron.  
 6 MR. BRADY: Okay.  
 7 MR. KOPP: Well Donny uses it though.  
 8 THE JUDGE: Well, anybody can use a  
 9 phone card.  
 10 MR. BRADY: I know. I'm just, I'm just  
 11 wondering how he, how he manages that.  
 12 MR. KOPP: See, Donny-- And you know,  
 13 he's--  
 14 MR. BRADY: Why don't you pay for one 120  
 15 minute phone call and she picks up one 120 minute  
 16 phone call card. And then each of you split your  
 17 transportation costs, she'll pay to get them out  
 18 there and you pay to get them back?  
 19 MR. KOPP: I don't know why I should  
 20 pay for them to come, pay for them to go out.  
 21 MR. BRADY: Well, the only reason I could  
 22 give you is because it's a question of how much  
 23 equity you'll end up with in the home two years  
 24 from now and whether or not she'll get cash out of  
 25 it. If she thinks that there's a cash benefit to

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1 fly them back and you two can work together to get  
 2 the best round trip rate and split it in half kind  
 3 of an idea.  
 4 MR. KOPP: Yes. That, that would be  
 5 fine with me.  
 6 THE JUDGE: But even then we're not  
 7 talking about like every other weekend kind of  
 8 flights.  
 9 MR. KOPP: No.  
 10 MR. BRADY: Oh, heavens no.  
 11 THE JUDGE: No. We're talking about--  
 12 MR. KOPP: But you know, I send them  
 13 out for every Christmas.  
 14 THE JUDGE: Your Christmas, your major  
 15 holidays like Christmas and summer.  
 16 MR. BRADY: My guess is we're talking  
 17 about twice a year.  
 18 THE JUDGE: Twice a year.  
 19 MR. BRADY: And we're talking about for  
 20 one child coming up. Or for two children coming up  
 21 and the following year for one.  
 22 THE JUDGE: Yes. So what it is, is I  
 23 would suggest the two major holidays, the holidays  
 24 but what's like the Christmas, the summer and  
 25 that's, that probably would be it. Or maybe at the

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1 her to hold onto the house that comes without  
 2 regard to where, where the money goes.  
 3 MR. KOPP: Okay. And my only problem is  
 4 is that, is to-- I don't, I don't know where she  
 5 gets her money. My boy that's out there now he  
 6 got free tickets but--  
 7 THE JUDGE: Well, with free tickets then  
 8 no one is hurt. Right?  
 9 MR. KOPP: No one is hurt yes, that's  
 10 great. But, but--  
 11 THE JUDGE: Well, if she can't come up  
 12 with her half then I guess the kids can't go.  
 13 MR. KOPP: Yes. And it's--  
 14 MR. BRADY: Well, the idea--  
 15 THE JUDGE: Now suppose you agreed to pay  
 16 one-half. I mean it's got to,--  
 17 MR. KOPP: Okay. If I agreed--  
 18 THE JUDGE: -- it's got to be like,  
 19 it's got to be like--  
 20 MR. KOPP: Okay. I agree to pay  
 21 one-half. I mean, it's only Aaron turns 18 in  
 22 February. Megan and, and Megan really doesn't care  
 23 to go out there either.  
 24 MR. BRADY: She flies them out and we  
 25 could talk, she, if she flies them out then you'll

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1 most if you can agree on a third then both of you  
 2 try to see if you would be willing to pay  
 3 one-half. And the way I look at it is she's the--  
 4 You have the children so if she cannot come up with  
 5 her one-half then there would be no visitation I  
 6 suppose.  
 7 MR. KOPP: That's right.  
 8 THE JUDGE: And to me, you know, you're  
 9 looking, you're looking at the most within the next  
 10 2-1/2 years maybe three, six, six times at the most  
 11 that you pay one-half.  
 12 MR. KOPP: And see and I've already,  
 13 Your Honor, I've already done that. I've sent them  
 14 out for Christmas and--  
 15 THE JUDGE: Well, I know. But we're  
 16 talking, we're talking about--  
 17 MR. KOPP: Future. And that's, that's  
 18 fine.  
 19 THE JUDGE: Let's not talk about what  
 20 happened already. We're talking about future. So  
 21 he can talk to his client and say look, your  
 22 ex-husband says he's willing to, to pay half of the  
 23 visitation up to two a year and you pay one-half.  
 24 That he'll pay on the phone each, each month up to  
 25 100 whatever that phone card, what, 108 dollars?

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1 MR. KOPP: It's \$18--  
 2 MR. BRADY: 101 (sic) minutes.  
 3 THE JUDGE: Or not dollars, minutes.  
 4 MR. KOPP: Yes.  
 5 THE JUDGE: 101 (sic) minutes.  
 6 MR. KOPP: 120 minutes.  
 7 THE JUDGE: 120 minutes. And she pay up  
 8 to that.  
 9 MR. BRADY: 101 (sic).  
 10 THE JUDGE: So they split that. And out  
 11 of the whatever interest she has in her equity it  
 12 will cover ongoing child support, any other  
 13 arrearages and any medical and dental. So in  
 14 essence, if she agrees to this deal all she has to  
 15 do is come up with one-half of her transportation  
 16 costs, and 102 (sic) minutes a month.  
 17 MR. BRADY: That will be her obligation  
 18 to come up with the money but in exchange she's  
 19 giving up this--  
 20 THE JUDGE: Equity, whatever--  
 21 MR. BRADY: -- approximately \$25,000 in  
 22 equity.  
 23 THE JUDGE: Well, whatever. We don't  
 24 know.  
 25 MR. BRADY: Whatever it is, I know.

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1 question of Mr. Brady and also the Court? I would  
 2 like Mr. Brady to, or if I could bring pictures,  
 3 Mr. Brady to come see the house. One, it's going  
 4 to need to be painted outside. Two, it's going to  
 5 need to be painted inside.  
 6 THE JUDGE: Well, Mr. Kopp--  
 7 MR. KOPP: And they're, these are  
 8 expenses, major expenses.  
 9 THE JUDGE: Well, the thing is though  
 10 that's not going to be addressed because it's  
 11 already been addressed by the decree that says she  
 12 gets one-half.  
 13 MR. KOPP: Yes. So, so is it--  
 14 THE JUDGE: It doesn't-- Your upkeep on  
 15 the home, the cost is not going to be taken out of  
 16 her equity.  
 17 MR. KOPP: So what I'm, what I'm saying  
 18 is if I have to paint my house for \$5,000 and I  
 19 have to paint the inside for \$5,000 and replace the  
 20 carpets, etcetera, you know, which I'm already in  
 21 a, put on a burden because she's not paying--  
 22 THE JUDGE: You're not going to get  
 23 credit for that.  
 24 MR. KOPP: I'm not, I'm not going to  
 25 get credit but she'll get credit for it in the

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1 THE JUDGE: A question mark on the  
 2 equity, arrearages.  
 3 MR. BRADY: And that's what she would be  
 4 giving up.  
 5 THE JUDGE: And any medical. Ongoing  
 6 child support too.  
 7 MR. KOPP: Yes.  
 8 MR. BRADY: I understand that and I'll--  
 9 THE JUDGE: And she has to understand  
 10 that she will be paying child support, something.  
 11 We don't know what that something is but she will  
 12 be paying so...  
 13 MR. BRADY: And I think that  
 14 mathematically it's going to boil down to her  
 15 taking child support, projecting it out, taking a  
 16 look at the \$25,000 and seeing if this offer makes  
 17 sense. Whether it's 25 or 30 or whatever it is.  
 18 THE JUDGE: Well, we don't know what the  
 19 equity in the home is.  
 20 MR. KOPP: Your Honor--  
 21 MR. BRADY: Those are uncertainties and  
 22 we understand that.  
 23 THE JUDGE: Uncertainties, it's not  
 24 going to be established.  
 25 MR. KOPP: Your Honor, may I ask a

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1 equity.  
 2 THE JUDGE: Well that was part of the  
 3 original decree. It has nothing to do with--  
 4 MR. KOPP: Okay. So, so what I'm  
 5 saying is--  
 6 THE JUDGE: -- this whatever happened  
 7 after.  
 8 MR. KOPP: -- that one, I don't have  
 9 the money to afford that. I mean, when you work  
 10 for BYU you don't make a lot of money.  
 11 THE JUDGE: Well, your home is not for  
 12 sale yet.  
 13 MR. KOPP: Yes. Yes.  
 14 THE JUDGE: But when, when your child  
 15 reaches-- But that's, that's what I said, it  
 16 behooves you to try to resolve this. Because let's  
 17 suppose the only issue was the, the equity in the  
 18 home.  
 19 MR. KOPP: Uh-huh (affirmative).  
 20 THE JUDGE: Well let's suppose your, the  
 21 children are 18, they're gone. So the Court has to  
 22 decide then I'll say well, put the home up for sale  
 23 and let's see what they can buy it for, what, what  
 24 you can sell it for and that's it and--  
 25 MR. KOPP: Can we do that? Shall we

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1 just say okay, you'll need to set up the child  
 2 support what she owes from now on until Megan turns  
 3 18. Let's say when she turns 18 the house is put  
 4 up for sale and split down the middle and what she  
 5 owes--  
 6 THE JUDGE: But that's, I don't need to  
 7 say that. That's already said now.  
 8 MR. KOPP: Yes, okay. And what she,  
 9 what she owes in child support is taken out of her  
 10 equity to me. Correct?  
 11 THE JUDGE: No, no, no. That's only if  
 12 they agree to accept your offer. What I do,  
 13 don't-- What I do, I can do anything I want  
 14 depending on the evidence I hear.  
 15 MR. KOPP: Okay. So I--  
 16 THE JUDGE: Don't, don't confuse with,  
 17 with Mr. Brady trying to resolve this outside the  
 18 court.  
 19 MR. KOPP: Okay.  
 20 THE JUDGE: And eventually--  
 21 MR. KOPP: I would, I would think it  
 22 would be in the best interests of both of us to  
 23 wait until Megan turns 18, see what the house  
 24 settles for, see what the house will sell for.  
 25 THE JUDGE: Well, the problem is you've

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1 credit for any arrearages in that amount. And  
 2 then I'm going to, you know, have to establish the  
 3 ongoing.  
 4 MR. KOPP: Yes.  
 5 THE JUDGE: But that has not, but that--  
 6 But you see, when the home is sold though whatever  
 7 equity there is in the home less the usual real  
 8 estate fees and closing costs and taxes, and I'm  
 9 not, and then that's only if the taxes is current,  
 10 owing no arrearages. then you both walk away and  
 11 you split what you have. That's a possibility.  
 12 Or you can, both sides can walk away now because  
 13 there's an offer by you to him as to what we just  
 14 stated.  
 15 MR. KOPP: Yes. Clear the child  
 16 support,--  
 17 THE JUDGE: Arrearages.  
 18 MR. KOPP: -- arrearages and medical, I  
 19 pay half of that.  
 20 THE JUDGE: Medical and then--  
 21 MR. KOPP: That to me would be great  
 22 if, then all the child support--  
 23 THE JUDGE: Well his client may go for  
 24 it.  
 25 MR. KOPP: Yes.

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1 already established some benefit.  
 2 MR. KOPP: I have established  
 3 benefit? What benefit have I received?  
 4 THE JUDGE: Well we got, I don't know  
 5 what the mortgage was on the home but you've got--  
 6 Did you borrow more than the mortgage you owed?  
 7 MR. KOPP: I've already showed that. I  
 8 had--  
 9 THE JUDGE: How much?  
 10 MR. KOPP: I got \$7,000.  
 11 THE JUDGE: Well that's only if I accept  
 12 that too.  
 13 MR. KOPP: Yes. And I (short  
 14 inaudible, two speakers).  
 15 THE JUDGE: And I, what I'm saying though  
 16 I may, but if I do all I'm saying is if it went to  
 17 the benefit of the children, there's no question if  
 18 that's what you're saying, then if Mr. Brady's  
 19 client, I find that there's a judgment I'm going to  
 20 offset that \$7,000.  
 21 MR. KOPP: Okay.  
 22 THE JUDGE: Because it already went to  
 23 the children.  
 24 MR. KOPP: Yes. And so--  
 25 THE JUDGE: And she's going to get a

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1 THE JUDGE: She may, she may just want  
 2 to go for it. I don't know.  
 3 MR. KOPP: You know, I'm willing to  
 4 just--  
 5 THE JUDGE: That's why all I'm saying is  
 6 I'm not going to-- In fact, what I could do is I  
 7 could just, I could wait for the day of trial and  
 8 at that time if you don't come to an agreement then  
 9 we'll just order that the quit claim be set  
 10 aside. We can even wait that long.  
 11 MR. KOPP: Okay.  
 12 THE JUDGE: That would give you that  
 13 much time to work it out. I suggest you work it  
 14 out because I think in the long-run after all is  
 15 said and done it may be beneficial so, you know.  
 16 MR. KOPP: Okay. So basically all we  
 17 need to do, Mr. Brady is, is state, we have to go  
 18 on an assumption that the house will sell for  
 19 \$147,000.  
 20 THE JUDGE: You don't even have to go  
 21 under that.  
 22 MR. BRADY: We don't even do that. All  
 23 I need to do is talk to her and let her know that  
 24 when the house sells-- Her options are two, she  
 25 can go under the decree or we can settle it under

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1 the terms that have been offered and we can  
2 evaluate what we think her benefit is under the  
3 decree and we can evaluate what we think her  
4 benefit is under the offer and then she's going to  
5 make a decision between those two.  
6 MR. KOPP: Okay.  
7 THE JUDGE: How much is she paying  
8 now? I mean ordered to pay under the decree?  
9 MR. KOPP: \$591.  
10 MR. BRADY: It's nearly \$600 a month.  
11 THE JUDGE: \$600 a month?  
12 MR. BRADY: Uh-huh (affirmative).  
13 THE JUDGE: Okay. That's, that's for  
14 two children?  
15 MR. KOPP: That was for three children.  
16 MR. BRADY: No. That was, that was for  
17 three. It would have reduced.  
18 THE JUDGE: Three children. Well that's  
19 going to be reduced. Even if I didn't modify, I  
20 did say I find a no change of circumstances that  
21 \$600 is going to be reduced automatically as each  
22 child reaches 18--  
23 MR. KOPP: Yes.  
24 THE JUDGE: -- or graduates, whenever  
25 that occurs.

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1 MR. KOPP: Right.  
2 THE JUDGE: Even, even if I find no  
3 change of circumstance because it would have been  
4 reduced anyway--  
5 MR. KOPP: Right.  
6 THE JUDGE: -- to the two children. And  
7 so, you know.  
8 MR. BRADY: We can go through and  
9 calculate those numbers. We'll do that. And I can  
10 show her what it is and she can look at it and  
11 decide which way it makes more sense to her. And  
12 I've got, I think I understand the offer unless  
13 you've got any changes to what we've just said.  
14 MR. KOPP: It's the house, and let's  
15 make sure that we've got this right because I don't  
16 want to get a statement and then say wait a minute,  
17 you know. That all child support past and future  
18 is done with.  
19 THE JUDGE: Right.  
20 MR. KOPP: That I will pay for one-half  
21 of the children to go out to New York and she'll  
22 pay for one-half. I'll pay for a 120 minute phone  
23 card, she'll pay for a 120 minute phone card.  
24 THE JUDGE: A month.  
25 MR. KOPP: A month. And that when we

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1 MR. KOPP: That's right. Uh-huh  
2 (affirmative).  
3 THE JUDGE: So it's going to be, be  
4 reduced to probably with the last child may be  
5 reduced to \$400. I don't know. Or \$350 or  
6 something like that. The \$600 for three  
7 children. Right?  
8 MR. BRADY: No. I'd have to go back.  
9 Your Honor. I thought--  
10 MR. KOPP: Pardon me? What was that,  
11 Your Honor?  
12 THE JUDGE: The \$600 per month is for  
13 how many children?  
14 MR. KOPP: For the three children.  
15 THE JUDGE: For the three.  
16 MR. KOPP: And Donny turned 18 last  
17 June, a year ago.  
18 THE JUDGE: Okay. What-- So when that  
19 happens, when did he, in June?  
20 MR. KOPP: June, June 18th of--  
21 THE JUDGE: Okay. So she had no  
22 obligation for him.  
23 MR. KOPP: Right.  
24 THE JUDGE: So that, that-- So it  
25 obviously is not going to be the \$600.

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1 sell the house that--  
2 THE JUDGE: No. There's no need to  
3 sell.  
4 MR. KOPP: When the house is sold.  
5 MR. BRADY: No. The house is yours at  
6 that point.  
7 MR. KOPP: Oh, and then the house is  
8 mine, period.  
9 THE JUDGE: Yes.  
10 MR. KOPP: Okay. Fine.  
11 MR. BRADY: And the only other thing in  
12 addition to that is that she doesn't pay for any  
13 co-pays on medicals or dentals.  
14 THE JUDGE: On the medical--  
15 MR. KOPP: Right. No. Please, please,  
16 Mr. Brady, have her send those forms out to the  
17 dentist. I don't need to see them. I know she got  
18 money back. I don't need to see them. They just  
19 need to send them to DMVA and--  
20 THE JUDGE: If she has insurance she  
21 ought to send them even though she's not paying for  
22 it so that he can--  
23 MR. BRADY: I would be glad to look into  
24 that.  
25 THE JUDGE: It's a benefit to the

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1 children. There's no benefit to him.  
 2 MR. BRADY: Yes. I'll look into that.  
 3 MR. KOPP: There's no benefit to me at  
 4 all in that. And no, there will be no medical or  
 5 dental.  
 6 MR. BRADY: Well, we'll do one or the  
 7 other. I'm sure by the end of this week I'll know  
 8 which way we're going, Your Honor.  
 9 THE JUDGE: Yes. And so if you do then  
 10 write it up and have him come to your office and  
 11 sign it. And then if not we'll go to the trial.  
 12 But as far as I'm concerned with the trial, the  
 13 trial is basically--  
 14 MR. BRADY: Modification of child  
 15 support.  
 16 THE JUDGE: -- modification of the child  
 17 support and any offsets.  
 18 MR. BRADY: Right.  
 19 THE JUDGE: And then the order of the  
 20 Court is that I will order that the quit claim deed  
 21 be set aside and proper documentation for the  
 22 county recorder's office and for various people be  
 23 known that I've set aside the quit claim deed.  
 24 MR. BRADY: Okay.  
 25 THE JUDGE: Because it was still within

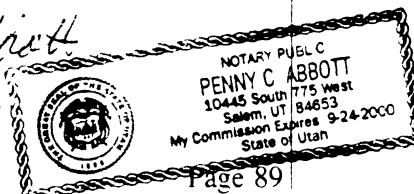
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1 the jurisdiction of this court.  
 2 MR. BRADY: Okay.  
 3 THE JUDGE: And that way we don't need to  
 4 file more documents. Hopefully you can try to,  
 5 try to work it out and there probably will be a  
 6 counteroffer or offers, counteroffers. But you've  
 7 got between now and July 2nd to try to work that  
 8 out. Okay?  
 9 MR. KOPP: Okay.  
 10 THE JUDGE: Thank you.  
 11 MR. KOPP: Thank you.  
 12 WHEREUPON, the hearing was concluded.  
 13 =====  
 14  
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1 REPORTER'S CERTIFICATION  
 2 STATE OF UTAH )  
 3 COUNTY OF UTAH ) ss  
 4  
 5  
 6 I, Penny C. Abbott, a Certified Shorthand  
 7 Reporter and Notary Public in and for the State of  
 8 Utah, do hereby certify that I received the  
 9 electronically recorded videotape #2/0 in the  
 10 matter of KOPP VS. KOPP and that I transcribed it  
 11 into typewriting, and that a full, true and correct  
 12 transcription of said hearing so recorded and  
 13 transcribed is set forth in the foregoing pages  
 14 numbered 1 through 89, inclusive and that said  
 15 pages constitute an accurate and complete  
 16 transcript of all the testimony and proceedings  
 17 adduced at the proceedings and contained on the  
 18 tape except where it is indicated that the tape  
 19 recording was inaudible.  
 20 WITNESS my hand and official seal this 3rd day  
 21 of March, 1999.

PENNY C. ABBOTT, CSR  
 LICENSE 22 10281, 7801  
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## Exhibit L

M. James Brady (3703)  
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Provo, Utah 84601  
(801) 374-6272

FILED  
Fourth Judicial District Court of  
Utah County, State of Utah.  
CARMA B. SMITH, Clerk  
11/10/96 Deputy

File No. 2663.03

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

REBEKAH ANN KOPP,

Petitioner,

vs.

DON SAMUEL KOPP,

Respondent.

**ORDER ON PETITIONER'S MOTION  
TO ENFORCE STIPULATION**

Civil No. 954401702 DA  
Judge Howard H. Maetani

The court, having considered Petitioner's Motion to Enforce Stipulation, the Memorandum of Points and Authorities attached thereto, and the Response by the Respondent, and after receiving oral argument from Petitioner and Respondent, hereby enters the following:

**ORDER**

1. The court finds that no agreement was reached between the parties.
2. Petitioner's Motion is hereby denied.
3. The quitclaim deed issued by Petitioner to Respondent is hereby declared to be invalid and Petitioner is hereby reinstated to the same ownership interests that she had prior to the issuance of the quitclaim deed.

4. At such time as the property is sold pursuant to the Decree of Divorce, in determining the parties' respective equities in the property, the parties shall use the payoff amount for the first and second mortgage as they existed as of the date that Respondent refinanced the home, and shall not use the amount of the new loan obtained by Respondent. Once the sale price is determined and the costs of sale are deducted therefrom, the parties shall deduct therefrom the payoff amount paid to Crossland Mortgage and First Security Bank Customer Service. Petitioner shall be entitled to receive one-half (1/2) of the balance after making the above stated deductions.

5. From Petitioner's equity in the home, Respondent may receive the amount of child support arrearages, if any, owed by Petitioner to Respondent.

DATED this 10 day of <sup>November</sup>~~October~~, 1998.

BY THE COURT:

  
JUDGE



APPROVED AS TO FORM:

\_\_\_\_\_  
Don Kopp

MAILING CERTIFICATE

On this 27<sup>th</sup> day of October, 1998, a copy of the foregoing *Order on Petitioner's Motion to Enforce Stipulation* was mailed by first-class mail, postage paid, to:

Don Samuel Kopp  
2647 West 210 North  
Provo, Utah 84601

  
\_\_\_\_\_  
Secretary

## Exhibit M

11/20/98 Deputy

M. James Brady (3703)  
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Attorneys for Petitioner  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

File No. 2663.03

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

REBEKAH ANN KOPP,  vs.  DON SAMUEL KOPP,	Petitioner,   Respondent.	<b>ORDER ON PETITIONER'S MOTION TO ENFORCE STIPULATION</b>  Civil No. 954401702 DA Judge Howard H. Maetani
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The court, having considered Petitioner's Motion to Enforce Stipulation, the Memorandum of Points and Authorities attached thereto, and the Response by the Respondent, and after receiving oral argument from Petitioner and Respondent, hereby enters the following:

**ORDER**

1. The court finds that no agreement was reached between the parties.
2. Petitioner's Motion is hereby denied.
3. The quitclaim deed, which is attached as **Exhibit "A"**, issued by Petitioner to Respondent was signed on January 30, 1997, recorded on March 10, 1997, and recorded in the Office of the Utah County Recorder as Entry 17548, in Book 4210 at Page 217, which

legal description is as follows:

Lot 15, Plat "A", RIVER MEADOWS SUBDIVISION, Provo, Utah according to the official plat thereof on file in the office of the Utah County Recorder

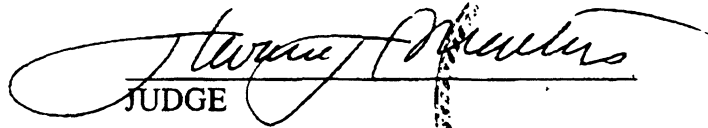
and is hereby declared to be invalid and Petitioner is hereby reinstated to the same ownership interests that she had prior to the issuance of the quitclaim deed.


4. At such time as the property is sold pursuant to the Decree of Divorce, in determining the parties' respective equities in the property, the parties shall use the payoff amount for the first and second mortgage as they existed as of the date that Respondent refinanced the home, and shall not use the amount of the new loan obtained by Respondent. Once the sale price is determined and the costs of sale are deducted therefrom, the parties shall deduct therefrom the payoff amount paid to Crossland Mortgage and First Security Bank Customer Service. Petitioner shall be entitled to one-half ( $\frac{1}{2}$ ) of the balance after making the above stated deductions.

5. From Petitioner's equity in the home, Respondent may receive the amount of child support arrearages, if any, owed by Petitioner to Respondent.

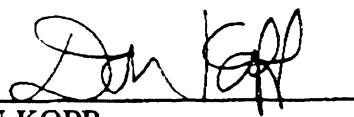
DATED this 20 day of November, 1998.

BY THE COURT:

  
JUDGE



APPROVED AS TO FORM:

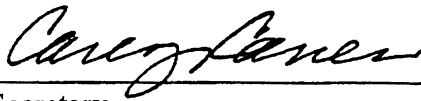
  
DON KOPP



MAILING CERTIFICATE

On this 18<sup>th</sup> day of November, 1998, a copy of the foregoing *Order on Petitioner's Motion to Enforce Stipulation* was mailed by first-class mail, postage paid, to:

Don Samuel Kopp  
2647 West 210 North  
Provo, Utah 84601

  
\_\_\_\_\_  
Secretary

**Exhibit “A”**  
***(Quit-Claim Deed)***

6.3.9999

PROVO LAND TITLE  
ORDER 34794

Mail Notice To:  
Jeffrey A. Orr  
3319 N. University Ave., Ste 200  
Provo, UT 84604

ENT 17548 BK 4210 PG 217  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1997 Mar 10 10:54 AM FEE 10.00 BY J&D  
RECORDED FOR PROVO LAND TITLE COMPANY

### QUIT-CLAIM DEED

REBEKAH ANN KOPP, Grantor, hereby Quit-Claims to DON SAMUEL KOPP, Grantee, for the sum of Ten dollars and no/100 -----DOLLARS (\$10.00) and other good and valuable consideration the following described tract of land in Utah County, State of Utah:

Lot 15, Plat A, RIVER MEADOWS SUBDIVISION, Provo,  
Utah, according to the official plat thereof on file in the office  
of the Utah County Recorder.

DATED this 30 day of January, 1997

Rebekah Ann Kopp  
REBEKAH ANN KOPP

STATE OF UTAH  
SUPERVISOR  
COUNTY OF UTAH

On the 30<sup>th</sup> day of January, 1997, personally appeared before me  
Rebekah Ann Kopp, the signer of the within instrument, who duly acknowledged to me that she  
executed the same.

Loretta M. Gannon-Murphy  
NOTARY PUBLIC

LORETTA M. GANNON-MURPHY  
NOTARY PUBLIC, State of New York  
No. 8001640  
Qualified in Suffolk County  
Commission Expires Sept. 8, 1998

0139

## Exhibit N

DEC 14 4 02 PM '98

M. James Brady (3703)  
Kim H. Buhler (7155)  
BRADFORD, BRADY & JOHNSON  
Attorneys for Petitioner  
389 North University Avenue  
Provo, Utah 84601  
(801) 374-6272

File No. 2663.03

THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY  
STATE OF UTAH

REBEKAH ANN KOPP,

Petitioner,

vs.

DON SAMUEL KOPP,

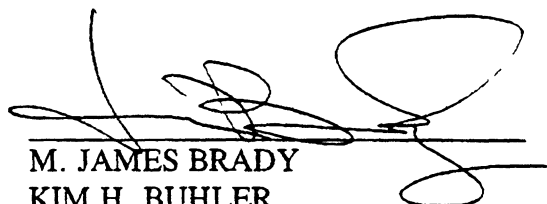
Respondent.

**NOTICE OF APPEAL**

Case No. 954401702 DA  
Judge Howard H. Maetani

Notice is hereby given that Petitioner above-named, hereby appeals to the Supreme Court of the State of Utah from the Order on Petitioner's Motion to Enforce Stipulation signed by Judge Howard H. Maetani in the Fourth Judicial District Court for Utah County on November 20, 1998.

DATED this 14 day of December, 1998.

  
M. JAMES BRADY  
KIM H. BUHLER  
Attorney for Petitioner

CERTIFICATE OF MAILING

I hereby certify that I personally a true and correct copy of the foregoing *Notice of Appeal*  
on this 14 day of December, 1998, by first-class, U.S. mail, postage prepaid, to the  
following:

Don Samuel Kopp  
2647 West 210 North  
Provo, Utah 84601

Dana L. Van Cott  
Secretary